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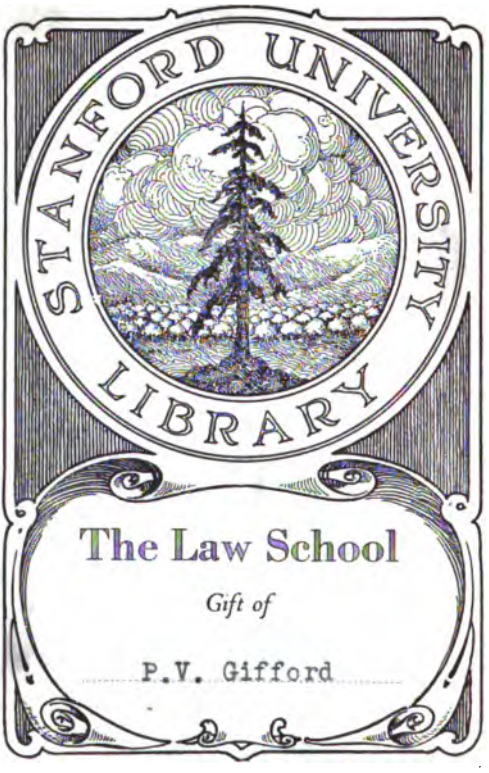

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A CUMULATIVE SUPPLEMENT

TO THE SECOND EDITION OF

EASTMAN

ON

PRIVATE CORPORATIONS

IN PENNSYLVANIA.

CONTAINING

ALL LAWS RELATIVE TO PRIVATE CORPORATIONS IN PENNSYLVANIA, OTHER THAN RAILROAD AND CANAL COMPANIES, ENACTED AT THE SESSIONS OF THE GENERAL ASSEMBLY OF 1909 AND 1911, AND ALL REPORTED DECISIONS OF THE COURTS RELATING TO THE SAME SUBJECT FROM THE DATE OF PUBLICATION OF SAID WORK TO THE FIRST DAY OF OCTOBER, 1911.

BY

FRANK M. EASTMAN.

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PREFACE.

THIS cumulative supplement contains all acts of assembly enacted, and all decisions of the courts reported relating to private corporations in Pennsylvania, other than railroad and canal companies, from the date of the publication of the Second Edition of Eastman on Private Corporations in Pennsylvania to the first day of October, 1911, and hence includes everything contained in the Supplement of 1909.

Except as stated below, the various acts and decisions are given in sections numbered to correspond with the sections treating of the same subjects, respectively, in the original work. The reader consulting a given section in said work has merely to refer to the section of the same number in this supplement for any acts passed or decisions reported since the publication of the said work relative to the subject matter of said section. If no section number be found in the supplement corresponding with the number of the section which he has been consulting, he will know that there are no new acts or decisions relating to the subject matter of such section. Should the reader, however, wish to use the supplement without referring to the original work, he will find it carefully indexed and accompanied by a table of cases and a list of statutes.

Owing to the enactment at the Session of 1911 of numerous and voluminous acts revising the laws relative to insurance companies, it has proved impracticable to follow the above plan in so much of this Supplement as relates to such companies, and these new provisions of law are inserted at the end of the supplement and given new section numbers. The new matter is, of course, appropriately indexed.

Various matters omitted from the original work, either through inadvertence or because of reasons which do not now seem to the writer to be sufficient, have been inserted in this supplement, notably the Act of May 31, 1907, P. L. 327, creating the Pennsylvania Railroad Commission, which will be found in the Appendix.

It is the intention of the writer immediately after the adjournment of each session of the General Assembly, until the publi-

cation of a third edition of the original work is deemed advisable, to issue a similar cumulative supplement containing all acts passed and decisions rendered relative to private corporations from the date of publication of the second edition of his book to the date of issue of said supplement, and hence including everything contained in all the previous supplements. The said second edition and the latest supplement will, therefore, always give the law of private corporations down to as recent a date as is practicable in a text book.

HARRISBURG, PA., Oct. 1, 1911.

A CUMULATIVE SUPPLEMENT

TO THE SECOND EDITION OF

Eastman on Private Corporations in Pennsylvania

43. Corporations are "Persons."

Corporations are not persons, however, within the meaning of the Act of March 30, 1905, P. L. 76, relative to foreign attachment.[1]

The Act of April 29, 1874, P. L. 73, does not authorize the formation of corporations having a membership of artificial persons, like corporations, or artificial quasi-persons, like firms;[2] nor may a corporation of the first class be formed under the provisions of said act, with a provision in its charter or by-laws that its membership shall consist of an individual member of any firm or corporation, or any individual in the business of supplying commodities in the decorative trades, but that only one individual member of any firm or corporation shall be entitled to membership.[3]

44. Revocation or Alteration of Charters.

While the Legislature is permitted to alter or revoke charters, it is prohibited from doing so in such manner that injury will be done to the corporators. Whether the Legislature has attempted to enact a measure prohibited by the Constitution is for the courts; whether injustice has been done in any particular case is inherently and necessarily a judicial question.[4]

An act fixing the rate which may be charged by railroad companies for the transportation of passengers, which by its operation reduces the returns to the shareholders of a particular rail-

(1) Cantor *v.* Kraft Mfg. Co., 18 D. R., 118 (1908).

(2) In re Decorative Trades Association of Phila., 18 D. R., 180; 36 Pa. C. C., 115 (1909); Real Estate Board of Brokers, 3 Berks, 374 (1911).

(3) In re Decorative Trades Association of Phila., 18 D. R., 503 (1909).

(4) Penna. R. R. Co. *v.* Philadelphia County, 220 Pa., 100 (1908).

road company to such an extent as to render their property unremunerative, may not be enforced against such company.[4*]

45. Collateral Attacks on Charters.

A person whose land has been condemned under the right of eminent domain may not question the existence of the condemning corporation on the ground that the act under which it is incorporated is unconstitutional.[4**]

Where a railroad company is formed by the consolidation and merger of two other companies, a private suitor may not attack the validity of a special act incorporating one of the companies, because of a deficiency in its title. Such question may be raised only by the Commonwealth in a direct proceeding for that purpose.[4***]

Whether a corporation has forfeited its charter, because of its not having completed its organization and exercised its franchises within the statutory time from the date of its charter, may not be determined in a collateral proceeding, but only by a direct proceeding to which the Commonwealth is a party, and a court will not inquire, on petition of a railroad company for approval of a bond for damages for the taking of land by eminent domain, into its right to take the land.[5]

46. Attacks on Special Franchises.

The Act of June 19, 1871, P. L. 1360, gives to a citizen who finds his property or rights in danger of being injured or invaded by a corporation the right, without waiting for the assistance of the Commonwealth, to challenge the authority of the corporation to the possession of "the right or franchise to do the act from which such alleged injury to private rights results." The corporation thus challenged must show its authority, and if it cannot do so, the defense fails.[5*]

Questions growing out of the exercise of the powers granted to a corporation may not be raised in a proceeding under the Act of June 19, 1871, P. L. 1360, under which act the inquiry

(4*) Penna. R. R. Co. *v.* Phila. County, 220 Pa., 100 (1908).

(4**) Burkhard *v.* Penna. Water Co., 58 Pitts., 338 (1910).

(4***) Yeingst *v.* Phila., H. & P. R. R. Co., 40 Pa. Super. Ct., 106 (1909).

(5) Lancaster & Northern R. R. Co.'s Application, 27 Lanc., 257 (1910).

(5*) Wilson *v.* Bell Telephone Co. of Penna., 3 Berks, 263 (1911).

is always limited to a consideration of the question, does the corporation possess the power to do what it is attempting to do, and not whether it is exercising its power in an improper manner.[5**]

The charter of a bridge company contained a provision that certain net profits should be set aside as a fund for freeing the bridge, and that when the said fund was sufficient the bridge should become free. A bill was filed by certain citizens and taxpayers under the Act of June 19, 1871, asking the court to determine whether such redemption fund had equalled the value of the bridge, and, if so, to declare the bridge free. The bill did not allege any special damage to the plaintiffs different from that sustained by other citizens in general. Held, that in the absence of special damage only the Commonwealth had power to institute such proceedings.[6]

51. Kinds of Corporations Included in Class 1.

Clause 3 of Section 2 of the Act of April 29, 1874, providing for the incorporation of corporations for "the support of any literary, medical or scientific undertaking, library association, or the promotion of music, painting or other fine arts," is not repealed by the Act of June 14, 1887, P. L. 383.[7]

53. Certificate of Incorporation.

See Section 71.

54a. Acknowledgment of Articles of Association.

A charter will not be granted where the articles of association are acknowledged before a notary public who is one of the signatories.[7*]

57. Incorporators.

Persons under twenty-one years of age may not be incorporators.[8]

(5**) Vinton Colliery Co. *v.* Blacklick & Yellow Creek R. R. Co., 226 Pa., 131 (1910).

(6) Tilbury *v.* Bridge Co., 57 Pitts., 589 (1910).

(7) Arts and Crafts Guild of Philadelphia, 20 D. R., 584 (1911).

(7*) In re Real Estate Board of Brokers, 3 Berks, 374 (1911). See Sect. 71.

(8) Lady Foresters of America, 36 Pa. C. C. 531 (1909); 18 D. R., 780.

59. Requisites of the Charter—Corporations of the First Class.

An appellate court will not review the decision of a lower court in granting a charter to the St. Joseph's Beneficial Society of Columbia, Pa., exceptions to the granting of which were filed by a member of the St. Joseph's Roman Catholic Beneficial Society of Columbia, where there is nothing to show that the decree involved an abuse of discretion.[9]

A charter was refused to a proposed corporation to be known as "City Lodge No. 17, Improved Benevolent Order of Elks of the World" on the objection of the "Pittsburgh Lodge No. 11, Benevolent and Protective Order of Elks," it appearing from the evidence that the similarity of names had already led to confusion in connection with mail deliveries, telephone messages, etc., at the club houses of the two associations, and that the members of the lodge applying for charter were negroes, while the membership of the objecting corporation was confined to white persons.[10]

A charter was granted to "The Veteran Volunteer Firemen's Association of Shamokin, Pa.," against the objection that a prior corporation was named "The Shamokin Volunteer Firemen's Relief Association."[11]

A charter was granted to a proposed corporation for the perpetuation of the history and memories of a local volunteer fire department, the promotion of social intercourse among its members, and the maintenance of a society for beneficial purposes from funds collected, to which persons who have been members of a volunteer fire department for fifteen years shall be eligible.[12]

A charter will not be granted where the certificate does not indicate how the funds necessary for the conducting of the proposed club are to be raised.[13]

It seems that an association incorporated for the maintenance of a club for social enjoyments, the charter of which does not

(9) St. Joseph's Beneficial Society of Columbia, Pa., 35 Pa. Super. Ct., 80 (1907).

(10) Charter of Iron City Lodge, No. 17, Improved B. & P. O. E. of the World, 39 Pa. Super. Ct., 365 (1909).

(11) Veteran Volunteer Firemen's Association of Shamokin, Pa., 20 D. R., 53 (1910).

(12) Veteran Volunteer Firemen's Association of Shamokin, Pa., 20 D. R., 53 (1910).

(13) Reading Quoiting Club, 20 D. R., 28 (1910); 2 Berks, 137; Real Estate Board of Brokers, 3 Berks, 374 (1911).

specifically grant the right to keep and dispense liquors to its members, has no power to keep and dispense the same.[13*]

A charter was not refused to the "St. John's Beneficial Union," because of the existence of a beneficial society known as the "Commandery 29, Knights of St. John." [14]

60. Membership.

An application for a charter of a corporation of the first class under the Act of April 29, 1874, P. L. 73, may be amended by striking out a provision that members may be expelled for causes prescribed in the by-laws.[15]

A charter will not be granted to a corporation of the first class where there is nothing in the certificate to show how the membership is to be made up or continued.[15*]

62. Advertisement of Notice.

The advertisement of application for a charter need not show the residences of the proposed members, nor the intended location of the corporation nor where it proposes to hold its meetings. It is sufficient if the notice be published (in Lancaster County) for three weeks in two newspapers of general circulation and the Lancaster Law Review, setting forth the character and objects of the proposed corporation.[16]

63. Charters Should be Filed in Prothonotary's Office.

While it is the better practice to file the proposed charter of a corporation of the first class in the prothonotary's office before application is made to the court for the granting of the same, there is no law requiring it, and a charter will not be refused because not so filed, but in such case action on the application will be deferred until full opportunity is given for an examination.[17]

A certificate of association was duly filed and notice of intention to apply for a decree was duly advertised. Subsequently the certificate was mislaid. Applicant petitioned to be allowed to file

(13*) Moose Home Association's Charter, 3 Berks, 135 (1910); Fourth Ward Democratic Club, 20 D. R. 841 (1911).

(14) St. John's Beneficial Union, 20 D. R., 503 (1910); 27 Lanc., 359.

(15) Arts and Crafts Guild of Philadelphia, 20 D. R., 584 (1911).

(15*) In re Real Estate Board of Brokers, 3 Berks, 374 (1911).

(16) St. John's Beneficial Union, 20 D. R., 503 (1910); 27 Lanc., 359.

(17) St. John's Beneficial Union, 20 D. R., 503 (1910); 27 Lanc., 359.

a duplicate *nunc pro tunc*. Held, that a duly authenticated copy of the certificate might be substituted for the one lost from the files.[18]

65. When a Charter Will Be Refused—Corporations of the First Class.[19]

There is no authority in law for the incorporation of an association to procure the enactment of legislation on the subject of mercantile tax law and to influence and watch legislation for the protection of capital.[20]

A charter will not be granted to a beneficial association to the membership of which only persons engaged in the retail liquor business are to be eligible. Nor to an association having two purposes, first, as a society for beneficial purposes, and, secondly, to protect the individual interests of its members and promote the interests of the retail liquor business in Philadelphia.[21]

A charter will not be granted to a subsidiary lodge of a national fraternal organization, against which a large number of residents of the vicinity remonstrate on account of the probable course to be adopted at the lodge room relative to the supply of intoxicating liquors, the application and by-laws being silent upon the subject and the petitioners having failed to file any stipulation relative to the subject matter of the protest.[22]

An unincorporated social club whose members authorize the sale of intoxicating liquors among themselves to assist in maintaining it will be refused a charter.[22*]

No law authorizes the incorporation of a club solely to advance and aid a particular political party.[22**]

A charter will not be granted where the certificate is defective in any of the following particulars:

(1) Where it states that the purpose of the proposed corporation is the maintenance of a club for social enjoyments, but fails to state the nature of such enjoyments; (2) where the manner of

(18) Reading Quoiting Club, 20 D. R., 28 (1910); 2 Berks, 137.

(19) See Sec. 43.

(20) Business Association, 35 Pa. C. C., 475 (1908).

(21) Italio-American Beneficial Retail Liquor Dealers' Assn., 19 D. R., 657 (1910); 37 Pa. C. C., 629.

(22) Wilmerding Lodge Loyal Order of Moose, 19 D. R., 651 (1910); 37 Pa. C. C., 526.

(22*) Fourth Ward Democratic Club, 20 D. R., 841 (1911).

(22**) Fourth Ward Democratic Club, 20 D. R., 841 (1911).

providing revenues for the accomplishment of its purposes is not set out; (3) where it does not appear upon what basis membership in the corporation is to be acquired or lost; (4) where the certificate contains a provision that in case of dissolution the proposed corporation shall have power to regulate the mode and manner in which its property shall be divided.[23]

A charter for a social and beneficial association will be refused where the application therefor does not state specifically: (a) the limit of income; (b) the method and means to be used to encourage social and brotherly feeling, and (c) how membership is to be created and lost.[24]

An application for a charter for a social club will not be approved where the proposed by-laws provide that less than a majority of the stockholders shall constitute a quorum and the election of new members is entrusted to a committee to be appointed by the president.[25]

A charter will be refused to a corporation of the first class, the purpose of which is stated to be "to facilitate negotiations in real estate, to take united action in legislative and municipal matters relating to the interests of real estate, and to promote friendship among its members." [25*]

66. Church Charters.

Whenever any particular church or religious congregation within this Commonwealth shall be desirous of becoming incorporated as a corporation of the first class, for the purpose of the support of public worship, it shall be lawful for the charter thereof to contain a provision that the said church or congregation acknowledges itself to be a member of and to belong to a specified church or religious denomination, and that as such it accedes to, recognizes and adopts the constitution, canons, or ecclesiastical laws, doctrines, discipline, and worship, of said specified church or religious denomination in the United States, and the constitution and canons, or ecclesiastical laws, of the diocese or district of said church or religious denomination, embracing the whole or a part of the Commonwealth of Pennsyl-

(23) Moose Home Association, 19 D. R., 1131 (1910).

(24) Casoli Mutual Relief Society of Phila., 19 D. R., 543 (1910); Moose Club of Chambersburg, 20 D. R., 449 (1910).

(25) Fourth St. Club, 18 D. R., 1039 (1909).

(25*) In re Real Estate Board of Brokers, 3 Berks, 374 (1911).

vania, with which the particular church or congregation is or expects to be connected: Provided, however, That the said constitution, canons, or ecclesiastical laws, doctrines, discipline, and worship, be not inconsistent with the constitution or laws of the United States or with the constitution or laws of the Commonwealth of Pennsylvania, and that they do not conflict with the control of the property of said corporation by the lay members of said corporaion.[26]

All provisions of the character hereinbefore specified which now appear in the charter of any corporation for the support of public worship heretofore granted, originally or by amendment by the Supreme Court or court of common pleas, shall be deemed and taken to be as valid to all intents and purposes as though the granting of such charter, with said provisions therein, had been theretofore expressly authorized by act of Assembly of this Commonwealth.[27]

An amendment to a church charter requiring the church to "accede to, recognize and adopt the constitution, canons, dectrines, discipline and worship" of the denomination and diocese to which it belonged, is permissible.[28]

67. Charters Will Not be Refused.

A proposed corporation of the first class may be chartered "to promote the growing and culture of game fish, and the maintenance of a suitable stream for the purpose of catching game fish," and the fact that the corporation intends to endeavor to take a specified stream and close it to the public, will not be considered in the proceedings to secure the charter.[29]

A charter will not be refused because the proposed corporation is seeking to obtain the property of an existing corporation, and a bill in equity is pending to restrain the officers of the latter from diverting said property to the former.[30]

A charter will be granted for a corporation "to develop and encourage higher artistic standards in the arts and handicrafts by means of instruction in designing and crafts work, given in classes and privately, and by public lectures on subjects pertain-

(26) Sec. 1, Act of May 5, 1911, P. L. 172.
(27) Sec. 2, Act of May 5, 1911, P. L. 172.
(28) Epiphany Church, Germantown, 18 D. R., 390 (1909).
(29) Marsh Creek Fishing Club, 36 Pa. C. C., 593 (1909).
(30) St. John's Beneficial Union, 20 D. R., 503 (1910).

ing to arts and crafts work; maintaining a guild-house in order that artistic craft workers may be gathered together and provided with studios and rooms for workers; maintaining a shop for the sale of articles made by its members and other craft workers, which shall be of the requisite standard of artistic excellence and mechanical skill," it appearing that the main purpose is "to develop and encourage higher artistic standards," and that the maintenance of a guild-house for workers and a shop for the sale of artistic goods is merely the means for the promotion of such main purpose.[31]

An association the purpose of which is to assist deserving Hebrews by loaning them money without interest may be incorporated as a charitable association under Sub-section II, Class 1, Act of April 29, 1874, P. L. 73.[32]

A charter for a social club will not be refused because the articles of association do not contain a clause prohibiting the passage of by-laws which are contrary to law.[33]

70. Provisions for the Formation of Corporations of the Second Class.

Paragraph 18. The carrying on of any mechanical, mining, quarrying or manufacturing business, including all the purposes covered by the provisions of the acts of the General Assembly, entitled "An act to encourage manufacturing operations in this Commonwealth," approved April seventh, one thousand eight hundred and forty-nine, entitled "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved July eighteenth, one thousand eight hundred and sixty-three, and the several supplements to each of said acts, including the incorporation of grain-elevators, storage-house and storage-yard companies, also including companies for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, furnishing and transmission for public use of water power therefrom: *Provided,* That such last named corporations, heretofore or hereafter incorporated, shall be compelled to furnish such

(31) Arts and Crafts Guild of Phila., 20 D. R., 584 (1911).

(32) Hebrew Free Loan Association of Philadelphia, 18 D. R., 1070 (1909).

(33) Roseto Republican Club, 20 D. R., 714 (1911).

power for public purposes; the construction of dams in any stream, and the driving and floating of sawlogs, lumber and timber on and over any streams, not exceeding thirty-five miles in length from their source, by the usual methods of driving and floating logs, timber and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats; also including the manufacturing and brewing of malt liquors; and also including companies for the transaction of any lawful business not otherwise specifically provided for by act of Assembly; *Provided, however,* That no corporation shall be chartered under this amendment with the authority to transact more than one kind of business, which must be set forth in the charter.[34]

Provided, That this act shall not be construed as repealing an act, entitled "An act providing that the right of eminent domain as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law," approved April thirteenth, Anno Domini one thousand nine hundred and five.[35]

Clause twenty of the second class of corporations, named in section two of the corporation act of one thousand eight hundred and seventy-four, which reads as follows:

"XX. The rechartering of corporations of either of these classes, the charters whereof are about to expire," shall be, and the same is hereby, stricken out and repealed; and that there shall be and is hereby substituted in lieu thereof a new clause, which shall read as follows:

XX. For any lawful purpose not specifically designated by law, as the purpose for which a corporation may be formed.[36]

The above act was passed in order that corporations formed

(34) Sec. 1, Act of June 3, 1911, P. L. 635. The object sought to be attained by the passage of this act, amending the 18th sub-section, Class II, Sec. 2, of the Act of April 29, 1874, was as follows: The Supreme Court held in Peifly *v.* Mountain Water Supply Company, 214 Pa., 340 (1906), that a water company chartered under clause 18 of the second class of Section 2 of the Act of April 29, 1874, was presumably a corporation for private uses, which could not constitutionally be invested with the right of eminent domain. The above act was passed to make all such corporations, corporations for public purposes, and therefore invested with the right of eminent domain. Whether or not it effects this purpose may be questioned.

(35) Sec. 2, Act of June 3, 1911, P. L. 635.

(36) Sec. 1, Act of May 11, 1909, P. L. 515, amending Clause XX, Sec. 2, Act of April 29, 1874, P. L. 73.

"for any lawful purpose" might be incorporated without subjecting the directors thereof to the liability imposed by law on the directors of corporations formed for any of the purposes enumerated in the eighteenth clause of Section 2 of the Corporation Act of 1874, relative to corporations of the second class.

The XX paragraph before amendment did not really state any purpose of incorporation, and inasmuch as the rechartering of corporations under the Act of 1874 is provided for by the fortieth section of said act, the said paragraph was wholly unnecessary.

Provision for the rechartering of corporations heretofore incorporated under said eighteenth paragraph for "any lawful purpose" is made by the Act of May 11, 1909, P. L. 575.[37]

71. Certificate of Incorporation.

Hereafter all certificates of association and articles of incorporation may be acknowledged and sworn to before any justice of the peace of this Commonwealth, in the same manner and with like force and effect as though acknowledged and sworn to before the recorder of deeds of the proper county or a notary public of this Commonwealth.[38]

75. Name of the Corporation.

A publisher was enjoined from using the title "Philadelphia Suburban Life" for a magazine on the application of the publisher of a magazine named "Suburban Life" where it appeared that the first named magazine bore a striking resemblance to the other in size, style, character of paper, illustrations, printed matter and in the general make up of its title page, that its publication was begun later than that of the other, and that it circulated in practically the same territory.[39]

81. Notice of Intention to Apply to Charter.

In order to avoid existing confusion, arising from the fact that publication of notices in connection with the formation, amendment, increase or reduction of capital stock, conduct of business, merger, transfer of franchises, or dissolution of corporations, joint-stock companies, limited partnerships, and partnership asso-

(37) See Sec. 1831.

(38) Act of June 1, 1911, P. L. 540.

(39) Suburban Press *v.* Philadelphia Suburban Publishing Company, 227 Pa., 148 (1910); 18 D. R., 997.

ciations are not required to be published in any designated paper in any county, and to serve the convenience of members of the bar and others interested in such notices, hereafter in all cases, where publication is or may be required by law in connection with the formation, amendment, increase or reduction of capital stock, conduct of business, merger, transfer of franchises, or dissolution of corporations, joint-stock companies, limited partnerships, or partnership associations, such notice as is or may be required, as aforesaid, shall be published in the legal journal, if any, of the proper county, in which court notices usually appear, which journal for such purposes shall be deemed a newspaper of general circulation: *Provided,* That the rates charged for such publication shall not be in excess of the usual and current rates charged by such newspapers.[40]

87. Validation of Acts Done by Corporations Formed Under the Act of April 29, 1874, Before Recording Their Charters.

Where heretofore any act has been done, or transfer or conveyance of any property been made, to or by any corporation created or intended to be created by virtue of the provisions of the Act of Assembly, approved April twenty-ninth, one thousand eight hundred and seventy-four, or its supplements, in good faith, after the issuing of letters patent and before the actual record of the certificate, such acts, transfers, and conveyances shall, after said certificate has been duly recorded as provided in the said act, be deemed and taken to be valid and effectual for all purposes: *Provided,* This act shall not affect any proceeding now pending.[41]

95. Forfeiture of Charters for Non-User.

See Sections 1814a-1814c.

96. Power to Adopt By-Laws.

"A by-law is a rule or law adopted by a corporation or association for the regulation of its own action and concerns and of the rights and duties of its members among themselves." Am. & Eng. Ency. of Law, Vol. 5, page 87. This term (by-law) has a peculiar and limited signification, being used to designate the orders and regulations which a corporation, as one of its legal in-

(40) Act of May 3, 1909, P. L. 386.

(41) Act of March 15, 1911, P. L. 17; Act of April 27, 1909, P. L. 244.

cidents, has power to make and which it usually exercises to regulate its own actions and concerns; and the rights and duties of its members among themselves.[42]

The by-laws of a corporation are essentially legislative in their character, and, like all other legislative acts, they are affected by the presumption that they are never intended to be retroactive unless such intent be clearly expressed.[43]

97. By-Laws May not be Repugnant to Charter.

All by-laws of a corporation must be made in conformity with its charter.[44]

102. Amendments to Charters of Corporations of the First Class.[45]

An application to amend the charter of a beneficial association by changing its name will be refused where it appears that the object sought to be attained by the amendment is to transfer the organization from one order to another.[46]

When application is made to alter or amend the charter of a corporation, it must appear that it is the act of the corporation in its corporate capacity, and not the act of individual members thereof nor of another organization.[47]

107. Change of Names of Corporations of the First Class.

It shall be lawful for the several courts of common pleas of this Commonwealth to change the name, style and title of any corporation of the class named in the first section of this act within their respective counties with the same proceedings, and in the same manner as they are now authorized to impose, amend or alter charters of such corporations.[48]

Since the passage of the above named act, it is no longer nesessary to notify the Auditor General of applications for changes

(42) Hayes *v.* German Beneficial Union, 35 Pa. Super. Ct., 142 (1907).
(43) Hayes *v.* German Beneficial Union, 35 Pa. Super. Ct., 142 (1907).
(44) Thayer *v.* Thompson, 220 Pa., 241 (1908).
(45) See Section 107.
(46) Liberty Bell Lodge's Petition, 231 Pa., 112 (1911).
(47) Liberty Bell Lodge's Petition, 231 Pa., 112 (1911).
(48) Section 3 of the Act of May 2, 1889, P. L. 160. This section was inadvertently printed in Section 110 of the original work, instead of Section 107 where it belonged. It is therefore reprinted in this supplement in its proper place for convenience of reference.

of names of corporations of the first class nor to produce proof to the courts of such notification, as was required by Section 1 of the Act of April 20, 1869, P. L. 82.[49]

109. Decisions Relative to Changes of Names of Corporations.

Where a corporation issued a bond of indemnity and subsequently changed its corporate name, and afterwards a suit was brought upon the bond wherein the original name of the company was used in the body of the statement without reference to any change of name, the court will, after the expiration of the time limit for bringing the suit, permit the amendment of the statement so as to set forth the new name of the company with the proper averment as to the change of name.[50]

115. Inspection of Books of Corporations by Stockholders.

"The stockholders of a corporation are the owners of its franchise and its assets and they have the right to be informed of the financial condition of the company. When, therefore, a stockholder furnishes sufficient data to warrant the conclusion that there is mismanagement and that the affairs of the company are not conducted in a proper manner and in the interests of the stockholders, he has the right to demand of the officers of the company permission to examine the books, records and accounts of the corporation so that he may protect his interests; and if the demand is refused and he makes application to the court to enforce it, a mandamus should be awarded. . . . . That the relator is a stockholder in a competing company is of itself not sufficient to deprive him of the relief he seeks in this proceeding against the defendant company. . . . . In the case at bar there is simply an averment, on belief, that the relator desires the information to use it for the advantage of a competing company. It is not alleged in the return that the averment can be supported by proof.

"The offer of the defendant company to buy the relator's stock at a price fixed by it is no answer to his demand for an inspection of the books and papers of the corporation. He is not required to sell his stock to the defendant company or its officers at any price, and especially at a price to be named by them. . . . . Nor is it an answer to the relator's application that the

(49) Liberty Bell Lodge's Petition, 231 Pa., 112 (1911).
(50) First Nat. Bank of Freeland *v.* Everett, 228 Pa., 272 (1910).

company will furnish him extracts or copies from its books, or that the company will agree to have them inspected by an expert selected by it and the relator. . . . If, therefore, there is apparent mismanagement or misconduct by the officers of the corporation, a stockholder has a right to make an investigation for himself and ascertain the true condition of the company's affairs. Of course, this right to examine the books, records and papers of the company must be exercised in good faith and at a proper time and place so as not to interfere with the business of the company. But subject to this limitation, the officers of the company must permit the stockholder to investigate the company's affairs, and if they fail to do so on a reasonable and proper demand, the court will, on proper application, enforce the demand by mandamus." [51]

". . . . A stockholder has without question the right to inspect the books of the company, at a proper time, and in a proper way, even though his only object be to ascertain whether the business has been properly conducted. Such a right is necessary for the protection of stockholders. . . . ." [52]

A petition in mandamus to procure an inspection of the books of a corporation wherein the petitioner avers that during his former official connection with the company he knew of instances where funds had been improperly applied; that the statement of the company did not show large profits which had been made by it; that the salary of the officers had been improperly increased; that the company had large earnings from which dividends should have been declared, and that as a stockholder he desired to inspect the books, in order to be advised as to the management, so that he might file a bill in equity if the result of his examina tions would justify him in so doing, will be granted.[53]

124. Where Expulsion Proceedings Are Regular Court Will not Interfere.

Where a member of a subordinate council of a beneficial association is charged with disloyalty to it and with violating its constitution and by-laws, and is summoned for trial before a tribunal established by the laws of the association, and he appears, makes defense and is adjudged guilty, and the subordinate

(51) Kuhbach *v.* Irvine Cut Glass Co., 220 Pa., 427 (1908).
(52) Hodder *v.* George Hogg Co., 223 Pa., 196 (1909).
(53) Hodder *v.* George Hogg Co., 223 Pa., 196 (1909).

council is ordered to expel him, which order is ultimately obeyed without the member having taken any appeal or asking for a re-trial, such member has no standing to maintain a mandamus suit in a civil court to secure his reinstatement. It is immaterial in such a case, that said subordinate council at first refused to obey the order for expulsion and separated itself from the association, where it appears that such council was subsequently reinstated in the association with the name of the expelled member dropped from its membership.[54]

128. Mandamus to Restore Expelled Members.

In proceedings to restrain the suspension of the relator as a member of an incorporated club, it appeared that the board of directors had suspended him and that he had appealed from their action, as permitted by the by-laws, to a special meeting of the members. The by-laws provided that two hundred should be a quorum. Two hundred and fifteen members were present at the meeting, of which ninety-one voted to sustain the action of the board, fifty-seven against sustaining the same, and sixty-one refrained from voting. The by-laws provided that if a majority of the meeting should vote in the affirmative, the sentence should stand as final. Held, that a majority of a meeting means a majority of those actually voting, and not a majority of the members present.[55]

The constitution and by-laws of a corporation of the first class provided for the expulsion of members for certain offenses. The application of membership, which was not a part of the by-laws, provided that in the event of misstatements in the application the applicant might be suspended or declared ineligible for membership. Plaintiff was admitted to membership and expelled six months later because of misstatements in his application. Held, upon mandamus proceedings to compel reinstatement, that the directors could expel a member only as provided in the constitution and by-laws, and there being no provision therein for expulsion on account of acts occurring prior to the person's becoming a member, the expulsion was illegal, and peremptory mandamus would issue to compel reinstatement.[56]

(54) Badger *v.* Aeolian Council, No. 17, Jr. O. U. A. M., 39 Pa. Super. Ct., 406 (1909).

(55) Myers *v.* Union League of Phila., 17 D. R., 301 (1908).

(56) Com. *v.* Pittsburgh Stock Exchange, 57 Pitts., 153 (1909).

132. Mandamus Does Not Lie Against Unincorporated Associations.

Under Section 13 of the Act of June 16, 1836, P. L. 789, a bill in equity will lie for the collection of a debt due by an unincorporated association.[57]

135. Embezzlement by Officers and Employees of Certain Corporations.

Any president, vice-president, cashier, treasurer, secretary, teller, bookkeeper, clerk, employe, or agent of any mutual savings bank, saving bank, bank of discount and deposit, trust company, title insurance company, surety company, or safe deposit company, incorporated under the laws of this Commonwealth; or of any private bank or unincorporated association, receiving deposits of money; or of any building and loan association, incorporated under the laws of this Commonwealth, or authorized to do business therein,—who shall embezzle, abstract, or wilfully misapply any of the moneys, funds, or credits of any of said institutions, or who shall issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment, or other instrument in writing, or who shall make any false entry in any book, report, or statement of such institution, with intent, in either case, to injure or defraud such institution, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such institution, or any bank examiner or other person legally authorized to examine the affairs of any such institution; and any person, who, with like intent, aids or abets any president, vice-president, cashier, treasurer, secretary, director, trustee, teller, bookkeeper, clerk, employe, or agent of such institution, in any violation of this act,—shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five hundred dollars nor more than five thousand dollars, and undergo imprisonment for not less than six months, nor more than five years, or either or both, in the discretion of the court.[58]

Whenever the Commissioner of Banking shall have knowledge of any violation of this act, it shall be his duty to institute prose-

(57) Central Printing & Pub. House *v.* Gross et al., 13 Dau. Co. Rep., 138 (1910).

(58) Sec. 1, Act of April 23, 1909, P. L. 169.

cutions against all persons violating any of the provisions hereof.[59]

The words "other than bodies corporate" in the Act of June 12, 1878, P. L. 196, applies to all corporations and not merely to such as *ejusdem generis* with banks. Hence, an employe of a publishing company may be punished under the provisions of said act.[60]

142. Officers of Corporations not to Contract to Furnish Supplies or Materials.

A decree of ouster will issue against a councilman of a borough who is a stockholder in a corporation which furnishes supplies to the borough, notwithstanding that he took no part in awarding the contract for supplies to such corporation, or in approving the bills for their payment, and that fraud is not alleged.[61]

144. General Powers of Officers Other than Directors.

Where the stockholders and directors of a corporation permit an officer thereof to exercise unrestrained control for a long time without instructions from or reference to any other authority, such officer may *prima facie* be taken to have power to do any act which the directors could authorize or ratify.[62]

145. Removal and Reinstatement of Officers.

"The general rule with respect to officers in private corporations, such as this is, that all below the grade of directors, and such other officers as are elected by the corporation at large, hold their office *durante bene placito* and are removable by the directors without cause assigned. . . . . Ordinarily, the selection of the secretary and treasurer is committed to the board of directors, as was the case here; but when the corporation has itself elected these officers, the directors must accept them, and the officers so elected hold on the terms and conditions prescribed by the corporation, and none other."[63] The provisions of the

(59) Sec. 2, Act of April 23, 1909, P. L. 169.

(60) Com. *v.* Keuhne, 42 Pa. Super. Ct., 361 (1910), affirming 18 D. R., 401 (1909).

(61) Com. *v.* Rhoads, 17 D. R., 583 (1907).

(62) Chestnut Street Trust & Saving Fund Company *v.* Record Publishing Co., 227 Pa., 235 (1910).

(63) Brindley *v.* Walker, 221 Pa., 287 (1908).

Act of May 14, 1891, P. L. 61, amending the Act of April 29, 1874, P. L. 73, do not change the status of said officers.[64]

It appeared in an action against a corporation by a former manager to recover salary after an alleged wrongful discharge, that a resolution had been passed giving the plaintiff leave of absence for a limited period; that four days later another resolution was passed discharging plaintiff for insubordination. There was testimony to show that before the adoption of the second resolution the plaintiff refused to take the vacation offered him and to permit another person to act in his place. Held, that the case was for the jury and that a verdict and judgment for plaintiff should be sustained.[65]

146. Officers are Agents.[66]

An officer is but the agent of his corporation, and in all transactions in which its interests are involved he must act for it with unselfish singleness of purpose. If in any such transaction it appears that he has acted against the interest of his corporation, the mere fact that the means used to accomplish the unlawful end would, if standing alone, be lawful in themselves, will not save such officer from responsibility to account for profits thus made by him which otherwise might have gone into the coffers of his corporation. . . . . In scrutinizing the acts of such officers the court will not heed mere forms when the substance which lurks behind them shows profits from a dealing in the corporation property.[67]

149. What Acts of Officers will be Considered Official.

Where a letter addressed to a corporation is answered by its secretary over his individual signature, and it appears from the said reply that it was in answer to a letter addressed to a corporation, in the absence of any evidence upon the subject, the court may not instruct the jury that the answer was the act of the secretary and not that of the corporation.[68]

(64) Brindley *v.* Walker, 221 Pa., 287 (1908).

(65) Trainer *v.* Trainer Spinning Co., 224 Pa., 45 (1909).

(66) See Section 192.

(67) Commonwealth T. I. & Tr. Co. *v.* Seltzer, 227 Pa., 410 (1910).

(68) Siracusa *v.* Miller Construction Company, 43 Pa. Super. Ct., 466 (1910).

151. Compensation of Officers.

In an action against a corporation to recover salary as manager by a person who acted as manager of the business before it was taken over by the corporation, the written contract of employment between the prior owner of the business and the plaintiff, is not admissible, if there be nothing to show that the plaintiff worked under the same contract as manager of the corporation.[69]

No compensation may be recovered by officers of a corporation for services rendered it, in the absence of a clear express contract.[70]

The rule that an officer of a corporation is not entitled to compensation, unless such compensation has been agreed to beforehand, applies to the president of a corporation, whether he be a director or a stockholder, or not.[71]

The president of a corporation may not recover on the basis of a *quantum meruit* for services rendered his corporation, except where an express contract can be shown, and this is so although the services for which he seeks to recover are professional, and not such as appertain to the office of president under the by-laws of the corporation.[72]

In order to recover his increase of salary, the manager of a corporation who is also a director therein must show an express contract or agreement by the corporation to pay such increase, and when the by-laws of a company declare that its directors shall manage its business and change the compensation of its managers from time to time, such a claim is barred by a finding that the directors never authorized the increase.[73]

Where a court finds on a bill in equity to restrain a corporation from paying salaries to its officers, alleged to be unauthorized and excessive, that such salaries were authorized by the unanimous action of the directors at a regular meeting at which the plaintiff was present, that the plaintiff as an officer accepted the increased salary, and that the salaries were not unusual or

(69) Cox *v.* Philadelphia City Pottery Co., 38 Pa. Super. Ct., 545 (1909).

(70) Kutztown Water Company *v.* Dietrich, 1 Berks Co., 67 (1908); In re Metropolitan Knitting Mills, 3 Berks, 151 (1910).

(71) Bair & Gazzam Manufacturing Co. *v.* Vandersaal, 36 Pa. Super. Ct., 615 (1908).

(72) Althouse *v.* Cobaugh Colliery Co., 227 Pa., 580 (1910).

(73) McKean *v.* Riter-Conley Manufacturing Co., 230 Pa., 319 (1911).

excessive, the Supreme Court will not reverse such findings where there is ample evidence to sustain them.[74]

The president and treasurer of a corporation may not by their deciding vote cast at a meeting of the directors, fix salaries for themselves which practically consume the net earnings, without consent of the stockholders and against the protest of the holders of half the stock.[75]

152. Powers of Officers as to Execution and Endorsement of Promissory Notes.[75*]

In an action against a corporation on a promissory note signed by its treasurer, the burden is on the plaintiff to show the authority of the treasurer to sign the note on behalf of the company. If the by-laws neither authorize nor forbid the treasurer to sign commercial paper, the plaintiff may offer testimony to show his authority to the effect that the treasurer was a director of the company, owning three-fourths of its stock, was manager of a hotel operated by it, kept its bank account in his name as treasurer, signed cheques thereon in his name as treasurer, and had previously signed notes for the company, including one to the plaintiff, all of which had been honored and paid, where there was nothing to show that the company did not receive the proceeds of the note, except that its books failed to show that it did.[76]

Where the stockholders and directors of a corporation have from its organization abandoned the entire management and control of its affairs to the president, the corporation is liable on its promissory note given by the president without any express authority from the board of directors or subsequent ratification, although he uses the proceeds for his own purposes and the corporation derived no benefit therefrom, the note having been given to one paying full value therefor without knowledge of the wrongful intent of the president.[77]

A corporation which receives the consideration for promissory notes signed by its treasurer only, and frequently recognizes its liability by paying discount upon the renewals and paying part

(74) Hodder *v.* Hogg, 230 Pa., 9 (1911).

(75) Price *v.* Pittston Opera House Co., 15 Luz., 21 (1908).

(75*) See Secs. 157, 159.

(76) First National Bank *v.* Colonial Hotel Company, 226 Pa., 292 (1910).

(77) Chestnut Street Trust & Saving Fund *v.* Record Publishing Company, 227 Pa., 235 (1910).

of the principal, may not later disaffirm the contract upon the ground of want of authority in the treasurer to endorse.[78]

In the absence of any provision in the by-laws of a corporation, the president and secretary of the corporation have no power to execute promissory notes in the name of the company, and the company cannot be held liable on such notes, unless it has directly benefited from them.[79]

Where a corporation receives the proceeds of a promissory note endorsed by its president, the endorsement is ratified and the corporation is estopped from denying the president's authority.[80]

153a. When Officers of Corporations may be Compelled to Testify as if Under Cross-Examination.

In any civil proceeding, whether or not it be brought or defended by a person representing the interests of a deceased or lunatic assignor of any thing or contract in action, a party to the record, or a person for whose immediate benefit such proceeding is prosecuted or defended, or any director or other officer of a corporation or joint stock or other association which is a party to the record, or for the immediate benefit of which such proceeding is prosecuted or defended, or any other person whose interest is adverse to the party calling him as a witness, may be compelled by the adverse party to testify as if under cross-examination, subject to the rules of evidence applicable to witnesses under cross-examination, and the adverse party calling such witnesses shall not be concluded by his testimony, but such person so cross-examined shall become thereby a fully competent witness for the other party as to all relevant matters, whether or not these matters were touched upon in his cross-examination, and also, where one of the several plaintiff or defendants, or the person for whose immediate benefit such proceeding is prosecuted or defended, or such director or officer, or such other person having an adverse interest, is cross-examined under this section, his co-plaintiffs or co-defendants, or fellow directors or officers, shall thereby become fully competent witnesses on their own be-

(78) First National Bank of Bangor *v.* American Bangor Slate Company, 229 Pa., 27 (1910); 18 D. R., 564; 36 Pa. C. C., 65.

(79) Monongahela National Bank *v.* Harmony Land Co., 226 Pa., 440 (1910).

(80) Mutual Alliance Trust Co. *v.* Nacrelli, 11 Del., 382 (1910).

half, or on behalf of the corporation or association of which they shall be directors or officers, as to all relevant matters, whether or not these matters were touched upon in such cross-examination.[81]

157. Managers of Corporations.

The proceeds of a note discounted by a bank were passed to the credit of a corporation in the wholesale liquor business, the by-laws of which provided that cheques should be signed by the secretary or treasurer, and countersigned by the president or vice-president. The president and secretary executed a power of attorney in the name of the company empowering a person described as a "manager" to sign company cheques. No resolution of the directors authorized this act. The so-called manager sold imported beer for his own account under the name of "manager of foreign beer department," preceding the name of the company. He used the name of the corporation in his business, with the knowledge of the directors, the object being to conceal the fact that he was violating the liquor laws by selling liquor without a license. Held, that the bank which had paid out moneys on the manager's cheques had a right to assume that such person was conducting a department of the corporation's business, and that in checking out money he was checking it for the corporation.[82]

159. President.

Acquiescence and ratification by stockholders and directors of unauthorized acts of the president of a corporation will not be inferred from mere lapse of time, in the absence of evidence that they were informed of the said acts. A resolution of a board of directors that "the management and administration of the corporation be left to the direction of the president" does not authorize such president to act as the financial manager of a corporation and execute notes in its name.[83]

The president of a corporation may not consent to the appointment of a receiver.[84]

(81) Act of March 30, 1911, P. L. 35, amending Sec. 7, Act of May 23, 1887, P. L. 158.

(82) First Nat. Bank of Allegheny *v.* Joseph Fleming & Co., Inc., 226 Pa., 416 (1910); 57 Pitts., 52.

(83) Chestnut Street Trust & Sav. Fund Co. *v.* Record Pub. Co., 18 D. R., 555 (1909).

(84) Flory Mfg. Co. *v.* Bangor Slate Co., 18 D. R., 564 (1909).

A. filed a bill in equity to restrain the receiver of a national bank from selling certain stock and bringing suit upon a note given by A., alleging an agreement between A. and the bank that the note was to be paid out of dividends to be declared upon the stock, and that the note was to be continued from five to ten years until paid with five per cent. interest. It developed upon hearing that the alleged agreement was made with the president of the bank, but not ratified or authorized by the board of directors or the discount committee, and that the president was personally interested in the transaction. Held, that the agreement was not binding, and that A. was bound to inquire further and ascertain that the agreement was duly authorized.[85]

The president of a corporation entrusted with its management is answerable to his corporation for the want of reasonable or ordinary care, his responsibilities being greater than those of a director.[86]

Entries on the books of a corporation made by a deceased president, or under his direction, constitute a standing acknowledgment of his liability as against himself and his legal representatives, and may form the basis of a suit for recovery.[87]

161. The President of a Corporation may not

Contract in writing for the purchase of real estate in the company's name, without authority and contrary to the by-laws and without the knowledge of the directors or other officers; and no ratification of the contract may be inferred from the fact that the company entered into possession of the real estate under a lease which had no connection with the contract and paid rent therefor, although the lease was for a year and the contract to purchase provided for a settlement in a year.[88]

163. Treasurer.

Although the treasurer of a corporation has no authority merely by virtue of his office to contract for his corporation, yet if he has been accustomed to make certain contracts for it in which the

(85) Herron *v.* Murray, 57 Pitts., 638 (1909).

(86) Rathfon *v.* Lancaster Trust Co., 26 Lanc. L. R., 369 (1909).

(87) Rathfon *v.* Lancaster Trust Co., 26 Lanc. L. R., 369 (1909).

(88) McKibbin *v.* Hulton Dyeing & Finishing Company, 227 Pa., 153 (1910).

corporation has acquiesced, it is estopped from denying his agency in making new contracts of a like nature.[89]

168. Liability of Corporations for Acts of Agents.

Where a defendant in a scire facias sur mechanics' lien denied the right of the corporation plaintiff to file the lien on account of the acceptance of a note by an agent of the company, the burden is upon the defendant to show the authority of the agent to accept the note as payment, and the defendant cannot prevail as to such defense, if the agent denies that he had such authority and no other proof is offered.[90]

The general rule as to agents of corporations is, that a corporate agent, like the agent of an individual, may make only such contracts as he is expressly authorized to make, or such contracts as pertain to the duties which the corporation imposes on him. Hence, a person may not retain negotiable securities pledged with him by an agent of a corporation for the debt of a third person, where it appears that such person knew the securities were the property of the company, that he made no inquiry as to the authority of the agent, and that, if he had made inquiry, he would have learned that the pledge was not only made without authority but in violation of the duties of the agent.[91]

In an action by a real estate company based upon an agreement in writing, an affidavit of defense is insufficient which sets up representations and non-performed promises made by unregistered agents of the plaintiff, without setting forth their authority to make the same.[92]

Where a person acting as general representative of a street railway company and its underlying companies, in their dealings with the city, his authority being recognized by all the companies and assumed by the city authorities, secures for his principals a franchise to lay tracks upon certain streets, which franchise is accepted by the principals upon certain conditions made or agreed to by him on their behalf, all the corporations represented are to be considered as parties to the agreement, and will not be heard

(89) First National Bank of Bangor *v.* American Bangor Slate Company, 229 Pa., 27 (1910); 18 D. R., 564; 36 Pa. C. C., 65.

(90) American Car & Foundry Co. *v.* Alexandria Water Co., 221 Pa., 529 (1908).

(91) Interstate Securities Co. *v.* Third National Bank, 35 Pa. Super. Ct., 277 (1908).

(92) Folsom Real Estate Co. *v.* Esmark, 38 Pa. Super. Ct., 580 (1909).

to dispute, on the ground of a lack of antecedent authority in him to represent them, either the fact that he did represent them during all the negotiations or the force of any undertaking made by him on their behalf.[92*]

186. Directors May Act Only at Meetings of the Board.

Where a natural gas company alleged that a contract to furnish gas to another company was invalid, because it was not approved at a meeting of its directors at which a quorum was present, and it appears that both companies had treated the contract as a valid contract, and did everything required to be done under its terms for a considerable length of time, held, that the facts were sufficient to constitute a ratification of the contract.[93]

187. Notice of Directors' Meetings.

A contract made by a majority of a board of directors may not be enforced if some of the directors were not notified of the time and place of the meeting at which the contract was made.[94]

Where a corporation has adopted a specific by-law as to the notice to be given directors of special meetings of the board, it is indispensable that all of the directors be given the notice prescribed by the by-law before a legal meeting of the board can be held, unless they should all attend and take part in the meeting without such notice.[95]

A director who has had actual notice that a meeting is to be held, but has not been informed of its object nor notified forty-eight hours prior to the meeting as prescribed by the by-laws, is not bound by the proceedings unless he attends the meeting.[96]

189. Common Law Liability of Directors.

"While it may not be legally accurate to say that a director of a corporation is a trustee for the entire body of stockholders within the exact meaning of that term, there can be no doubt he does occupy such a fiduciary relation as to imperatively demand both

(92*) Reading *v.* United Traction Co., 3 Berks, 245 (1911).

(93) Greensboro Gas Co. *v.* Home Oil & Gas Co., 222 Pa., 4 (1908).

(94) Jones *v.* Coal Company, 9 Lack., 379 (1909).

(95) Hebb *v.* Hebb Coke Drawer Co., 37 Pa. C. C., 354 (1910); 20 D. R., 199.

(96) Hebb *v.* Hebb Coke Drawer Co., 37 Pa. C. C., 354 (1910); 20 D. R., 199.

in good morals and sound law that he shall manage the business of the company in such a manner as to promote not his own interests but the common interests of all the shareholders. He is a mandatory or agent or implied trustee of the stockholders, and as such the doctrine applicable to trust relations will be enforced against him, and in favor of the rights of the stockholders." [97]

The directors of a bank are not personally liable for losses occasioned through the fraud, misconduct and unauthorized acts of the president who deceived them by false reports and statements, but only for gross inattention and negligence and for losses resulting from fraud and misconduct for their own benefit.[98]

Directors owe a duty as trustees not only to the nominal shareholders of their companies, but also to the subscribers to the stock thereof. This duty is cognizable in equity, and the principle that a trustee may not plead laches against his *cestui que trust* applies.[99]

190. Statutory Liability of Directors and Officers.

Where the highest court of appeal of another state has decided that the liability imposed upon the directors of corporations of such state for failure to make statutory returns is a penal liability, the courts of this Commonwealth will not enforce such liability against the directors in an action brought to enforce the penalty in this state.[100]

The directors of a corporation are not liable for the debts of the company contracted in the usual course of business, whether such debts are or are not in the aggregate more than the paid-in capital stock.[1]

191. Directors of Manufacturing, Mechanical, Etc., Companies Individually Liable for Declaring Dividends When.

Illegal distributions of supposed profits, made by the officers of a corporation without formal action by its board of directors, are dividends within the meaning of the Acts of July 18, 1863,

(97) Schaffhauser *v.* Arnholt & Schaefer Brewing Company, 218 Pa., 298 (1907); Rathfon *v.* Lancaster Trust Co., 26 Lanc. L. R., 369 (1909).

(98) Rathfon *v.* Locher, 27 Lanc., 337 (1910).

(99) Mackey Baking Company *v.* Mackey, 19 D. R., 893 (1909).

(100) Commercial National Bank *v.* Kirk, 222 Pa., 567 (1909).

(1) Miller *v.* York Coated Paper Co., 39 Pa. Super. Ct., 538 (1909).

(1864) P. L. 1102, and April 29, 1874, and are not assets of the corporation so as to give a general receiver authority to enforce the collection of the same. The only liability of the officers in such case is to the creditors of the company, who must first have the amounts of their indebtedness adjudicated in an action against the corporation, and then file their bill for themselves and other like creditors against the officers making such illegal payments.[2]

192. Directors Must Account for Secret Profits.

In an action by a stockholder against the directors of a corporation to recover a share of the profits on stock illegally sold to themselves by the directors, at par, and thereafter sold at an advance, the statute of limitations is not a bar where it appears that the suit was brought on March 22, 1907, that the certificates were dated March 13, 1901, but that the stock was not actually delivered to the defendants or paid for by them until April 2, 1901.[3]

A corporation had practically its whole capital invested in a valuable piece of real estate. The president of the company was informed by the agent of another corporation that such corporation desired to buy said real estate, but although said president knew that his company was willing to sell its property, he led the agent to believe that the real estate could not be purchased. Afterwards negotiations were carried on between the two which resulted in a written contract whereby the agent undertook to buy from the president a majority of the stock of the company owning the real estate, and thereupon said president and a stockholder of his corporation acting collusively bought enough stock to gain control of the corporation which they turned over to the agent of the other corporation, whereby the agent secured control of the corporation owning the real estate, which real estate was thereupon regularly sold to the agent's corporation for a not inadequate price. On a bill filed by certain of the stockholders, held, that said president and director should refund to such claimants their proportionate share of the profits made on the sale of stock to the agent, it appearing that all of the negotiations, arrangements and contracts in the stock deal and the sale and transfer of real estate were really parts of one and the same transaction.[4]

(2) Childs *v.* Adams, 43 Pa. Super. Ct., 239 (1910).
(3) Strickler *v.* McElroy, 40 Pa. Super. Ct., 277 (1909).
(4) Commonwealth T. I. & Tr. Co. *v.* Seltzer, 227 Pa., 410 (1910).

195. Contracts Between Directors and Their Corporations.

Where the directors of a corporation supplied money wherewith to meet its legitimate needs, and the money so furnished is properly used in carrying on the corporate business, they are entitled to recover from the company the value of the money so supplied and used, not upon the basis of any actual contract, but on that of a duty which the law imposes to make fair compensation for what has been properly received and applied, and moneys paid by the president of a company to employees thereof may be recovered by him from the corporation, if such expenditures were known, adopted and ratified by the board of directors.[5]

204. Miscellaneous.

Where a corporation makes a demand note to its own order, which is endorsed by the directors and delivered as collateral security for the payment of another note of the company, and subsequently the directors accept the benefit of a deed of trust of all the property of the company executed to secure them against loss as endorsers, and it appears that the property covered by the deed was sufficient to secure them, such directors become principals, and may not be relieved of liability as endorsers by claiming any privilege incident to the contract of endorsement.[6]

206. Corporate Meetings.

Where a corporate meeting is once organized and all stockholders present have participated, no person or faction even though it constitute a majority of the stockholders may then defeat the organization or render the subsequent proceedings invalid by refusing to vote or by withdrawing.

Where there is a legally constituted meeting, the acts of a majority of those present are the acts of the corporation, though such a majority be less than a majority of the total number of shareholders, and notwithstanding that a by-law of the corporation provides as follows:

"The holders of a majority of the stock issued shall constitute a quorum for the transaction of business at any regular or special meeting. If no quorum be present at any meeting so called, a less

(5) Hebb *v.* Hebb Coke Drawer Co., 37 Pa. C. C., 354 (1910); 20 D. R., 199.

(6) Alldred's Estate (No. 2), 229 Pa., 632 (1911).

number may meet and adjourn from time to time until a quorum be present." [6*]

208. Notice of Corporate Meetings.

All subscribers to the stock of a corporation are entitled to notice of the corporate meetings, which notice should not be confined to the incorporators of record, and subscribers to participating preferred stock are entitled to notice of meetings at which action affecting the issue of common stock is contemplated or taken.[7]

209. Quorum.

See Section 206.

211. Refusal of Directors to Institute Legal Proceedings.

The rule is that a bill which asserts the right of a corporation must ordinarily be brought by the corporation itself, and that the right of an individual stockholder to act for the corporation is exceptional, but where a corporation has practically gone into liquidation and its trustees have no active duties to perform and where these trustees are found to be the nominees of the defendants who committed the wrong complained of, the stockholders have reason to believe that a suit in the name of the corporation would not be prosecuted with effect, and the trial judge will allow them to bring and maintain their own bill.[8]

213. Votes.

Where a corporation incorporated prior to April 29, 1874, whose constitution and by-laws provided that each stockholder should have one vote, reincorporated afterwards under the provisions of the Act of April 29, 1874, without changing the provision in its by-laws relative to voting, held, that the stockholders of such corporation were subject to the provisions of Section 10 of the said Act of April 29, 1874, and entitled to cast one vote for each share of stock held by them, and that such stockholders were not required to give previous notice of intention to cast one vote for each share.[9]

(6*) Com. *v.* Vandegrift, 232 Pa., 53 (1911).
(7) Mackey Baking Co. *v.* Mackey, 19 D. R., 893 (1909).
(8) Commonwealth T. I. & Tr. Co. *v.* Seltzer, 227 Pa., 410 (1910).
(9) Commonwealth *v.* Smith, 19 D. R., 638 (1910); 37 Pa. C. C., 625.

215. Cumulative Voting.

A stockholder voting by ballot at an election for directors, desiring to cumulate his vote on one director, must clearly indicate on his ballot his intention to cumulate. It is not enough to write on the ballot merely the number of shares which he votes and the name of one candidate.[10]

217. Voting Trusts.

An agreement between the majority of stockholders of a corporation and its three directors whereby the stockholders transfer the legal title and voting rights of their stock to said directors and trustees for the term of five years, the design being to secure a continuation of the business policy of the company inaugurated by the officers then in control of its affairs, is not invalid. While the general policy of law prohibits the separation of the voting power from a beneficial interest in the stock, such a separation may be justified where there is a proper interest to conserve, a definite policy in the interest of the company to be carried out or some beneficial and not unlawful interest of the stockholders to be served. A provision in such agreement giving the trustees the first right to purchase the stock of any contracting party not desiring to continue the trust relation at the end of the term of the agreement, for double the par value of the same, for the use and benefit of the remaining parties, renders the power bestowed a power coupled with an interest and therefore irrevocable.[11]

218. Evidence of Right to Vote.

It is the duty of the judges of election, under the provisions of the Act of May 26, 1893, P. L. 141, to reject votes offered in the name of an undisclosed trust.[12]

The plain intention of the statute is to prevent voting by an inactive trustee or the vote of an undisclosed trust. It cannot be said that such a requirement is destroying any property right. It is merely regulating the exercise of the right. If the trust be not active, the right to vote the stock is expressly reserved to the real owner by the second section of the act.[13]

(10) Com. *v.* Stager, 20 D. R., 650 (1911).
(11) Boyer *v.* Nesbitt, 227 Pa., 398 (1910); 15 Luz., 105.
(12) Coolbaugh *v.* Herman, 221 Pa., 496 (1908).
(13) Coolbaugh *v.* Herman, 221 Pa., 496 (1908)

Objection to the voting of stock need not necessarily be made at the precise moment of the offer of the ballot. It would seem that it is sufficient if protest is made while the election is still in progress.[14]

The provisions of the Act of May 26, 1893, P. L. 141, requiring the rejection of votes at corporate elections tendered by trustees, the character of whose trusteeship is disclosed neither on the face of their stock certificates nor on the transfer books of the company is directory and not mandatory. Hence, where a vote is tendered by an active trustee, the character of whose trusteeship is satisfactory disclosed to the election officers, though not in the manner required by statute, such vote should be received.[15]

222. Supervision of Elections by Courts of Equity.

Courts may supervise the right of stockholders attempting to vote shares of stock of their corporations, where it appears that some supervision is necessary to secure a fair and honest election.[16]

232. Ratification of Acts of Promoters.

Where the officers and stockholders of a corporation and the members of a partnership agree to form a new corporation to take over the business of the two concerns, and the promoters agree that one of the paid officers of the old company shall become such an officer of the new, and, after the new corporation is organized, such officer assumes his new office and performs his duties, the contract of employment is binding upon the new corporation, unless it is renounced and disapproved by its directors.[17]

237a. Full Paid Stock.

"A bona fide purchaser for value and without notice, of stock issued by a corporation as paid up, cannot be held liable on such stock in any way, either to the corporation, corporate creditors or other persons, even though the stock was not actually paid up as represented. . . . . The law goes still further and holds that where a person in open market, in good faith and with-

(14) Coolbaugh *v.* Herman, 221 Pa., 496 (1908).
(15) Com. *v.* Nesbitt, 14 Luz., 323 (1909).
(16) Coolbaugh *v.* Kinsey, 11 North., 242 (1908).
(17) Girard *v.* Case Bros. Cutlery Co., 225 Pa., 327 (1909).

out notice, purchases certificates, such stock is to be deemed 'paid up' in his hands, and he is protected as a bona fide purchaser, even though there is nothing on the face of the certificates stating that they are paid up. This can now be laid down as the established rule. It is based on sound public policy, favoring as it does the transfer of personal property and the quasi-negotiability of stock, and discountenancing secret liens and constructive notice." [18]

240. How Stocks May Be Issued.

A contract by which a person agrees to enter the employment of a corporation at a certain salary per annum, and the corporation agrees, in addition, to set aside to him stock of the company to a certain amount, to be paid out of the earnings of the company, may not be enforced so as to compel the company to issue or set aside the stock on the terms stated, such contract being in violation of that provision of the Act of April 29, 1874, P. L. 73, that no corporation shall issue stock except for money, labor done or money or property actually received.[19]

A corporation may not issue stock or bonds in consideration of valuable recipes or formulas for baking crackers and making other products of flour, which recipes or formulas are not patented nor secret.[20]

247. Right of Stockholders to Subscribe to Increases of Stock.

When the capital stock of a corporation is increased by the issue of new shares, each holder of the original stock has a right to subscribe for and demand such proportion of the new stock as the number of shares of original stock owned by him bears to the whole number of shares before the increase. The persons so entitled to participate are the stockholders when the stock is actually issued.[21]

The stockholders of a corporation authorized an increase of 2,000 shares in 1892, all of which stock was issued before 1901, except 172 shares. At the time of the authorization of the increase, a resolution was adopted providing that the stock then au-

(18) Cook on Corporations, Vol. 1, Section 50, cited and adopted in French *v.* Harding, 46 Pa. Super. Ct., 363 (1911). See Finletter *v.* Appleton, 195 Pa., 349 (1900).

(19) Gearhart *v.* Standard Steel Car Co., 223 Pa., 385 (1909).

(20) Mackey Baking Company v. Mackey, 19 D. R., 893 (1911).

(21) Strickler *v.* McElroy, 45 Pa. Super. Ct., 165 (1911).

thorized and remaining undisposed of should be issued upon such terms as the directors might direct. In 1901 said directors, who owned a controlling interest in the stock, agreed among themselves for the division among them of said 172 shares at par. The stockholders were not notified of their intention so to do, nor had the stockholders, other than themselves, knowledge of the transaction until the new shares had been issued and paid for. Between 1892 and 1901, the stock trebled in value, and five years after 1901 was sold for four times the par value. In an action by one of the stockholders against the directors to recover his proportion of the profits derived by them from the sale of the stock to themselves, held, that the plaintiff was entitled to recover.[22]

253. Fraudulently Issued Stock.

Where stock was issued to two directors, one of them the president of the board, at a price less than par, and less than actual value, in payment of claims held by them against the company, at a time when there was money in the treasury with which the claims could have been paid, and the issuance of the stock was secured by the votes of those to whom it was authorized to be issued, over the protest of a minority of the board, who urged that the claims should be paid in cash instead of in stock, the stock so issued was ordered to be delivered up for cancellation, and the dividends paid thereon ordered to be returned to the treasurer of the company.[23]

254. Preferred Stock.

Where a resolution authorizing the issue of preferred stock provides that such stock shall be entitled "to receive cumulative yearly dividends of five per cent. in each year before any dividends shall be set apart or paid on the common stock," such stock is entitled, after it has received its preference in dividends, and after the common stock has received an equal amount in dividends, to participate with the common stock in the distribution of the remaining profits if any; and the fact that for a series of years the preferred stockholders were paid without objection on their part only five per centum per annum, while the entire bal-

(22) Strickler *v.* McElroy, 45 Pa. Super. Ct., 165 (1911).

(23) Hebb *v.* Hebb Coke Drawer Co., 37 Pa. C. C., 355 (1910); 20 D. R., 199.

ance of profit was paid to the common stockholders, is not to be considered in determining the rights of the parties, if it appear that while the dividends paid to the common stock was much more than five per cent. on the amount paid in, it was much less than five per cent. on the par value of the stock.[24]

Where in a contract for the creation of preferred stock there is no stipulation to the contrary, the weight of authority clearly favors the right of preferred stockholders to share with the common stockholders in all profits distributed after the latter have received in dividends an amount equal to the stipulated dividend on the preferred stock.[25]

263. Fraudulent Sales of Stock.

Where a stockholder has been induced by fraudulent representations of the officers of a corporation to sell his stock in such corporation to the company at a price much below its real value, a court of equity will direct a reassignment of the stock on repayment of the purchase price, but will not, in the same proceeding. inquire into the business of the company, order an accounting and compel the repayment to the company of money fraudulently taken from it by its officers as salary.[26]

A stockholder of a national bank upon a purchase of its stock made before its insolvency, may not, after such insolvency and the appointment of a receiver, rescind the purchase because of false representations made to him by the cashier of the bank, and thereby avoid his liability to creditors under Section 5151 U. S. Revised Statutes, although no action has been brought against him by the receiver.[27]

264. Agreement Among Stockholders as to Sales of Stock.

Where at a meeting of subscribers for the purpose of organizing a corporation, the subscribers agree that one of the by-laws of the proposed company shall provide that the subscribers shall not sell or assign their stock until they shall have offered it to the other subscribing stockholders, and thereafter the company is organized and such a by-law is adopted, it constitutes an agree-

(24) Sternbergh *v.* Brock, 225 Pa., 279 (1909).
(25) Sternbergh *v.* Brock, 225 Pa., 279 (1909).
(26) Pellio *v.* Bulls Head Coal Co., 224 Pa., 379 (1909).
(27) Hanby *v.* Cosmopolitan National Bank, 20 D. R., 401 (1910).

ment among the subscribing stockholders, and is enforceable against each of them, or, if deceased, against their personal representative.[28]

265. Sales on Margin—Gambling Contracts.

In an action against a customer by a stock broker to recover for a loss sustained by reason of the sale of stock, the question whether the transaction did or did not involve a gambling contract is to be determined by the intention of the parties. If the plaintiff sold the stock on the order of defendant, in good faith, expecting the stock to be delivered in pursuance of the sale, the transaction was not a gambling one, though the defendant may have so understood it.[29]

In an action by a stockholder to recover on a promissory note given him for a balance due upon stocks purchased and sold by him for the maker, where the broker produces his monthly statements covering every stock transaction, and testifies that every share of stock appearing on the statements had been purchased by him outright, that the certificates therefor had been delivered to him, that every share of stock purchased for the defendant which defendant ordered to be sold, had been actually sold to the purchaser, and he produces on the trial the cheques given for the stock purchased, and the defendant in no way contradicts this testimony, but testifies that his understanding with the broker was that the latter was to buy the stocks outright, and that the transactions between them were not for the matching of differences, but that the stock was to be actually bought and sold as by him directed, the contract is not a wagering contract, and it can avail the defendant nothing to have the jury instructed to consider such circumstances as the extent of the transactions, the aggregate of the amounts involved and his own financial circumstances.[30]

266. Life Estates and Remainders in Stocks.

Where the estate of a decedent, as the holder of certain shares of stock, becomes entitled to subscribe to increases of stock at

(28) Garrett *v.* Phila. Lawn Mower Co., 39 Pa. Super. Ct., 78 (1909). See Sec. 217.

(29) Berg *v.* Flickinger, 38 Pa. Super. Ct., 433 (1909).

(30) Fearon *v.* Little, 227 Pa., 348 (1910).

par, such right does not belong to the holder of the life estate, but the increase must be treated as capital and be added to the trust fund for the benefit of the remainderman.[31]

274. Nature of Contract of Subscription for Stock.

A subscription by a number of persons to the stock of a corporation to be thereafter formed by them constitutes first, a contract between the subscribers themselves to become stockholders when the corporation is formed, upon the conditions expressed in the agreement, and as such is binding and irrevocable from the date of subscription; second, it is in the nature of a continuing offer to the proposed corporation which, on acceptance by it, becomes a contract between each subscriber and the corporation.[32]

"The nature of such an agreement has been well settled. 'A subscription to a joint-stock company is not only an undertaking to the company ,but with all other subscribers. Such contracts are tri-lateral, and even if fraudulent as between two of the parties, they are to be enforced for the benefit of the third:' Graff *v.* Railroad Co., 31 Pa., 489; Railway Co. *v.* Bily, 11 Pa. Super. Ct., 144. We need not we think stop to consider the proposition that a subscriber to the stock of a company may withdraw his offer before it has been accepted, because in this case there was ample evidence, and it was uncontradicted, that the company had accepted the offer in a manner recognized by the law, so that the defendant had become in law and in fact a stockholder of the plaintiff company although no certificate representing the shares subscribed for had been made out or delivered to him. The certificate was not the thing subscribed for. It is but the convenient and usual evidence of the relation created by the act of subscription and its acceptance by the corporation. Cook on Stockholders (3d ed.), sec. 192."[34]

275. Sales of Stock by a Corporation at Less Than Par.

Where a director of a corporation has been active in selling stock of his company at a price below par, which price was fixed by the board of directors in good faith with the consent and ap-

(31) Scott's Estate, 25 Montg., 120 (1909).

(32) Garrett *v.* Phila. Lawn Mower Co., 39 Pa. Super. Ct., 78 (1909).

(33-34) Keystone Wrapping Machine Co. *v.* Bromeier, 42 Pa. Super. Ct., 384 (1910; Altoona Sanitary Milk Co. *v.* Armstrong, 38 Pa. Super. Ct., 350 (1909).

proval of all the stockholders, under a by-law authorizing the directors to fix the price and sell treasury stock, which price is the full value of the stock at the time, for the purpose of raising money to defray the expenses of the company at a time when there is no money in the treasury, and such director has consented to this course of dealing for a long time and has himself received and retained much of the stock at such price, he will be estopped from interposing an objection to the legality of the stock obtained by others in the same manner.[35]

279. Agreements to Take Stock from Subscriber or to Pay Calls for Him if He Require.

The treasurer of a foreign corporation, and a large stockholder therein, signed an agreement under seal, in consideration of one dollar, to pay to plaintiff, in consideration of his purchase of one thousand shares of stock of said company, eight hundred dollars and interest in one year from date, if the purchaser should become dissatisfied with his purchase, and delivered the stock to said treasurer, upon his making payment. In an action upon the agreement, held, that the agreement was supported by sufficient consideration; that it was not necessary to show that the purchase of the stock benefited the defendant or to show that the foreign corporation was registered; that whether the real consideration was to give the defendant the right to vote the stock by proxy was a question for the jury, and that a demand upon any particular day was unnecessary.[36]

293. Conditional Subscriptions Made After Incorporation.

A subscription to the stock of a corporation was unconditional upon its face, but by a contemporaneous writing executed by the company the defendant was to be released from his obligation if he decided at the expiration of three months that he could not take the stock. Upon notification that his subscription was due, defendant decided not to take the stock and so informed the treasurer of the company. No demand was afterwards made for payment, and the defendant's name was never entered as a subscriber upon the company's books, nor was his subscription treat-

(35) Hebb *v.* Hebb Coke Drawer Co., 37 Pa. C. C., 355 (1910); 20 D. R., 199.

(36) Rogers *v.* Torpey, 18 D. R., 653 (1909).

ed as an asset. Held, in an action to recover the amount of the subscription, that the same could not be maintained.[37]

302. Subscriptions Upon Which No Calls Have Been Made Within Six Years.

An action must be brought against a stockholder of an insolvent corporation on a subscription for unpaid stock within six years of the insolvency of the company or it will be barred by the statute of limitations. The right of action arises immediately upon the insolvency, and not upon an assessment or call made after the insolvency has fixed the rights of all parties concerned. In such a case the law of the forum controls and not the law of the domicile of the corporation.[38]

306. Releases of Subscriptions.

In a suit by a corporation against a subscriber to its stock to recover the amount of his subscription, the defense will not be permitted to set up a secret parol agreement with an agent of the plaintiff by which the defendant might be relieved while other subscribers continued to be bound.[39]

308. Defenses to Subscriptions.

In an action to recover money paid by plaintiff to defendant under an alleged contract whereby defendant was to deliver stock in a particular company then forming, where defendant avers that the money paid was paid him as an officer or agent of the company, and as part of plaintiff's stock subscription, the question of defendant's liability is, under the conflicting testimony, one for the jury, and in such a case the fact that no stock was ever issued by the company, and that this was through no fault of the defendant, or the fact that the defendant expended the money for the company's benefit or both facts combined, do not constitute a defense.[40]

(37) Harvey *v.* Weitzenkorn, 15 Luz., 240 (1910). Affirmed by Supreme Ct. in op. filed July 6, 1911, on the ground that the subscription was cancelled by company after defendant's refusal to take the stock.

(38) Newton's Estate, 46 Pa. Super. Ct., 40 (1911).

(39) Lead & Zinc Company *v.* Obernauer, 56 Pitts. L. J., 363 (1909); Scranton Lunar Park Assn. *v.* Osthaus, 8 Lack., 345 (1908).

(40) Lieb *v.* Painter, 42 Pa. Super. Ct., 399 (1910).

322. Certificates of Stock.

A person who subscribes to the stock of a corporation becomes a stockholder as soon as the company has accepted his offer, and it is immaterial that no certificate representing the shares subscribed for has been delivered to him or made out.[41]

324. Method of Transfer of Shares of Stock.

Title to a certificate and to the shares represented thereby can be transferred only—

(a). By delivery of the certificate, indorsed either in blank or to a specified person, by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b). By a delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation, or code of regulations or by-laws, of the corporation issuing the certificate, and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation, or shall be registered by a registrar, or transferred by a transfer agent.[42]

324a. Transfers by Persons not Sui Juris and by Fiduciaries.

Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid indorsement, assignment, or power of attorney.[43]

324b. Registered Holders.

Nothing in this act shall be construed as forbidding a corporation—

(a). To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(41) Keystone Wrapping Machine Co. *v.* Bromeier, 42 Pa. Super., 384 (1910).

(42) Sec. 1, Act of May 5, 1911, P. L. 126.

(43) Sec. 2, Act of May 5, 1911, P. L. 126.

(b). To hold liable for calls and assessments a person registered on its books as the owner of shares.[44]

324c. When Title Derived from Certificate Takes Precedence Over Title Derived from Separate Assignment.

The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.[45]

324d. Delivery of Certificate.

The delivery of a certificate to transfer title, in accordance with the provisions of section one, is effectual, except as provided in section seven, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.[46]

324e. Endorsement Affective—When. 1

The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section seven, though the indorser or transferer—

(a). Was induced by fraud, duress, or mistake to make the indorsement or delivery, or

(b). Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c). Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d). Has received no consideration.[47]

(44) Sec. 3, Act of May 5, 1911, P. L. 126.
(45) Sec. 4, Act of May 5, 1911, P. L. 126.
(46) Sec. 5, Act of May 5, 1911, P. L. 126.
(47) Sec. 6, Act of May 5, 1911, P. L. 126.

324f. Recission of Transfer.

If the indorsement or delivery of a certificate—

(a). Was procured by fraud or duress, or

(b). Was made under such mistake as to make the indorsement or delivery inequitable, or

If the delivery of a certificate was made—

(c). Without authority from the owner, or

(d). After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

One. The certificate has been transferred to a purchaser for value, in good faith, without notice of any facts making the transfer wrongful, or—

Two. The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate, or to rescind the transfer thereof, and, pending litigation, may enjoin the further transfer of the certificate or impound it.[48]

324g. Recission Does Not Invalidate Subsequent Transfer by Transferee in Possession.

Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.[49]

324h. Delivery of Unindorsed Certificate.

The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the

(48) Sec. 7, Act of May 5, 1911, P. L. 126.
(49) Sec. 8, Act of May 5, 1911, P. L. 126.

transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.[50]

324i. Attempted Transfer Without Delivery of Certificate.

An attempted transfer of the title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer, and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.[51]

324j. Warranties by Transferrer.

A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

(a). That the certificate is genuine,

(b). That he has a legal right to transfer it, and

(c). That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.[52]

324k. When Warranty not Implied.

A mortgagee, pledgee, or other holder for security of a certificate, who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.[53]

324l. Attachment or Levy Upon Shares.

No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by

(50) Sec. 9, Act of May 5, 1911, P. L. 126.
(51) Sec. 10, Act of May 5, 1911, P. L. 126.
(52) Sec. 11, Act of May 5, 1911, P. L. 126.
(53) Sec. 12, Act of May 5, 1911, P. L. 126.

the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.[54]

324m. Attachment of Certificates.

A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof, as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process.[55]

324n. No Liens or Restrictions on Shares Unless Indicated on Certificates.

There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation, and there shall be no restriction upon the transfer of shares so represented, by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.[56]

324o. Alteration of Certificates.

The alteration of a certificate, whether fraudulent or not, and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.[57]

324p. Lost or Destroyed Certificates.

Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction, and upon the giving of a bond, with sufficient surety to be approved by the court, to protect the corporation or any person injured by the issue of the new cer-

(54) Sec. 13, Act of May 5, 1911, P. L. 126.
(55) Sec. 14, Act of May 5, 1911, P. L. 126.
(56) Sec. 15, Act of May 5, 1911, P. L. 126.
(57) Sec. 16, Act of May 5, 1911, P. L. 126.

tificate from any liability or expense which it or they may incur by reason of the original certificate remaining outstanding. The court may also, in its discretion, order the payment of the corporation's reasonable costs and counsel fees.[58]

The issue of a new certificate under an order of the court, as provided in this section, shall not relieve the corporation from liability in damage to a person to whom the original certificate has been or shall be transferred, for value, without notice of the proceedings or of the issuance of the new certificate.

324q. Cases not Provided for by Act.

In any case not provided by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators, and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.[59]

324r. Interpretation of Act.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.[59*]

324s. Definition of Indorsement.

A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.[60]

324t. Other Definitions.

The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person; and thereupon such

(58) Sec. 17, Act of May 5, 1911, P. L. 126.
(59) Sec. 18, Act of May 5, 1911, P. L. 126.
(59*) Sec. 19, Act of May 5, 1911, P. L. 126.
(60) Sec. 20, Act of May 5, 1911, P. L. 126.

other specified person is the person appearing by the certificate to be the owner thereof, until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.[61]

One. In this act, unless the context or subject matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes state, territory, district, and insular possessions of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title, and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction or as security therefor.

Two. A thing is done "in good faith," within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.[62]

324u. Act Applies Only to Certificates Issued After Its Passage.

The provisions of this act apply only to certificates issued after the taking effect of this act.[63]

324v. Act Takes Effect—When.

This act shall take effect on the first day of January, one thousand nine hundred and twelve.[64]

(61) Sec. 21, Act of May 5, 1911, P. L. 126.
(62) Sec. 22, Act of May 5, 1911, P. L. 126.
(63) Sec. 23, Act of May 5, 1911, P. L. 126.
(64) Sec. 25, Act of May 5, 1911, P. L. 126.

324w. Title by Which Act May be Cited.

This act may be cited as the Uniform Stock Transfer Act.[65]

323. How Issued—Transfers.

A borrowed money from the B bank and as security for the loan pledged shares of stock in the C bank. Before default the stock was sold and purchased by D. The C bank refused to allow the shares to be transferred, claiming that A was indebted to it, and that it had a prior claim on such stock under the Act of May 13, 1876, Section 21, which provides that shares in a bank shall not be transferred while the holder is indebted to the bank. Held, that said provision of the Act of 1876 was inconsistent with and repealed by the Act of June 24, 1905, P. L. 258, providing for the issuing of certificates of stock and their transfer, and that D was therefore entitled to have the stock transferred on the books of the bank.[66]

326. Status of Transferer and Transferee After Transfer and Before Registry Thereof.

The purchaser of partly paid shares of stock from the original subscriber therefor, which purchaser sells said stock without having the same transferred to him on the books of the corporation, is not liable to said original subscriber for the amount of an assessment made on said stock long after the purchaser had parted with the ownership of the stock, which said original subscriber is compelled to pay. In such case, the only recourse of the original subscriber is to the owner of the stock at the time the assessment was levied.[67]

The vendor of stock who remains the registered owner after sale and is therefore compelled to pay an assessment, holds the relation to his vendee of a quasi-surety, and in an action against said vendee to recover the amount of the assessment so paid, the statute of limitations runs from the time the vendor actually paid it, and not from the time when the assessment was due.[68]

328. Liability for Calls Becoming Due After Transfer.

See Section 326.

(65) Sec. 26, Act of May 5, 1911, P. L. 126.

(66) Bank of Millvale *v.* Ohio Valley Bank, 58 Pitts., 329 (1910).

(67) Rogers *v.* Toland, 43 Pa. Super. Ct., 248 (1910); Huegle *v.* Bean, 43 Pa. Super. Ct., 352 (1910).

(68) Arndt *v.* McQuillen, et al., 19 D. R., 115 (1910).

331. Restrictions Imposed by By-Laws on Transfers.

Where a by-law of a corporation provides that none of the stock of the company "shall be sold or transferred, unless the board of directors shall have received a notice thirty days previous thereto, and an option given such board to purchase it," the directors are not bound to submit the option to the stockholders for their acceptance or rejection of it. The board, in the absence of fraud, may waive its right to the option and permit a transfer of the stock, and said board may not be enjoined by stockholders from exercising such right.[69]

332. Prohibition of Transfers of Shares When Owner is Indebted to the Corporation Issuing the Same.

A corporation brought two actions simultaneously, one in assumpsit and the other by attachment under the Act of 1869, against its secretary for money embezzled. It obtained judgment in the action of assumpsit and afterwards in the attachment proceeding, issued a *fi. fa.* on the judgment in the attachment proceeding, levied on stock owned by the defendant in the plaintiff corporation, and bought it at the sale for $534.00. Another judgment creditor petitioned for an order upon the sheriff to pay the purchase money into court for distribution, on the ground that the judgment in the attachment case was void. Held, that the plaintiff was entitled to but one judgment, but that neither the defendant nor a stranger could claim the fund, as the plaintiff had a lien upon the stock for money due by its secretary under Section 2 of the Act of March 29, 1819, 7 Sm. Laws, 217, and Section 7 of the Act of April 29, 1874, P. L. 72, and that the attachment proceeding should be regarded as merely ancillary, and the rule to pay the fund into court discharged.[70]

335. Conversion of Shares by Bailees, Pledgees and Others.

Where a firm of brokers to whom the owner of certificates of stock has delivered such certificates to be sold, signing a blank transfer and power of attorney on the back of each certificate, instead of selling them delivers them to a bank in substitution of collateral previously pledged for a debt of their own, the bank is entitled, upon the failure of the brokers, to hold the certificates as against the owner, on the ground that the giving up of the col-

(69) Hughes *v.* Citizens' Elec. Lt., Ht. & Pr. Co., 226 Pa., 95 (1909).
(70) Centennial Market Company *v.* McCarey, 18 D. R., 606 (1909).

lateral previously pledged was a consideration for the pledge of the certificates, and the bank was, therefore, an innocent holder for value to the extent of such consideration.[71]

Where a pledgee or purchaser takes stock with notice of the capacity in which an agent holds it, he may not deny the right of the principal therein.[72]

A purchaser of shares of stock from a known special agent is bound to ascertain the nature and extent of the agent's authority, and is not entitled to rely upon the agent's possession of a certificate, with an assignment and power of attorney to transfer, and a telegram from the principal containing the expression "if you can't sell, borrow." If in such case the purchaser with full knowledge of the ownership of the stock pays ten cents a share for it, when inquiry would have shown him that the agent had been instructed to sell it to another party for fifty cents a share, equity will compel him to reassign the stock to the owner upon repayment of the amount paid to the agent, with interest.[73]

342. Jurisdiction of Courts of Common Pleas in the Matter of Corporation Mortgages.

Where a Pennsylvania corporation with principal offices in another state, operating a passenger railway company in Lancaster County, defaulted in the payment of interest on its bonds, and the trustee, a Philadelphia trust company, sold, in Lancaster County, the mortgaged property under a power in the mortgage, held, that said trustee could be cited to file an account in the said county.[74]

343a. Sinking Funds for the Payment of Funded Indebtedness.

A coal mining corporation gave a mortgage to secure a bond issue, providing for a payment into a sinking fund to amount to not less than a certain sum annually, and further that when the amount in the hands of the trustee should be equal to the amount of the principal and interest of the bonds then outstanding the payments into the sinking fund should cease. On a bill in equity filed by the company against the trustee, alleging that such trus-

(71) King *v.* Mellon National Bank of Pittsburgh, 227 Pa., 22 (1910).

(72) Sloan *v.* Brown, 228 Pa., 495 (1910).

(73) Sloan *v.* Brown, 228 Pa. 495 (1910); Wood's Appeal, 92 Pa., 379 distinguished.

(74) Mortgage of Philadelphia, Coatesville & Lancaster Pass. Ry. Co., 19 D. R., 680 (1909).

tee had in the sinking fund investments exceeding in value the amount of the outstanding bonds at par with accrued interest, and praying for relief from making further payments on account of the sinking fund, and that the trustee be restrained from exercising any right of entry for forfeiture or foreclosure so long as complainants should maintain securities in the sinking fund sufficient to pay the principal of the bonds then and thereafter outstanding, and interest thereon as the same became due and payable, *held,* that the bill should be dismissed, the intent of the agreement being to maintain the sinking fund during the continuance of the trust, to secure the payment of the bonds and interest payable in the future until their maturity, and not merely until such time as such fund might equal the amount of the then outstanding principal of the bonds.[75]

361. Increases of Indebtedness.*

Guaranteed contracts issued by a mortgage guarantee company are not debts of a corporation within the meaning of the act relative to increases of indebtedness, and the issuing of such contracts is not an increase of indebtedness so as to require compliance by the corporation with the provisions of the Act of Feb. 9, 1901, P. L. 3, providing a method for increasing the indebtedness of corporations.[76]

Since the passage of the Act of February 9, 1901, P. L. 3, the indebtedness of a corporation is not required to bear any ratio to its capital stock, and may be increased without reference to the amount of said stock.[77]

It seems, however, that corporations formed by purchasers of property and franchises at judicial and other sales may not issue bonds to an amount in excess of the amount of their capital stock. See Sec. 642.

362. What are not Increases of Indebtedness Within the Meaning of Section 7 of Article XVI of the Constitution.

A corporation organized for the erection of buildings, and for purchasing, holding, leasing, mortgaging, improving and selling

(75) Lehigh Valley Coal Company *v.* Girard Trust Company, 19 D. R., 584 (1910).

*See Sec. 81.

(76) In re Phila. Company for Guaranteeing Mortgages, 11 Dau. Co. Rep., 224 (1908).

(77) Miller *v.* York Coated Paper Co., 39 Pa. Super. Ct., 538 (1909).

real estate may increase its indebtedness without the consent of its stockholders, as provided by Section 7 of Article XVI of the Constitution, and the Acts of April 18, 1874, P. L. 61, and February 9, 1901, P. L. 3, by giving a mortgage, the proceeds of which are to be used in the liquidation of debts of the corporation contracted for building materials, labor, etc., in the erection of a certain building upon its real estate, in the purchase of adjoining land and the erection of other buildings.[78]

371a. Underwriting Agreements.

Where on a bill in equity to enforce a written subscription to an underwriting agreement for the purchase of the bonds of a corporation, one of the defendants in his answer claims that his subscription was a conditional one, because of a parol collateral agreement made when he signed it, and the answer is supported by the testimony of one uncontradicted witness, strongly corroborated, a finding by the trial judge that the subscription was in fact conditional will be sustained.[79]

Where it appears in such a case that the agreement was tripartite, the fact that the subscription of one of the defendants was conditional does not defeat the defense of such defendant, where it appears from the contract that if such subscription fails the other subscribers are all released from liability; nor can the assignee of the original seller of the bonds claim in such case that he is entitled to recover, although his assignor was not.[80]

372. Mortgage Deeds of Trust—Trustees.

A court of equity has jurisdiction to control the exercise of the discretion of the trustee of a corporate mortgage where such discretion has been abused. Where the mortgage of a coal company provides that certain of the bonds secured by it be redeemed at a premium, and certain other bonds termed "serial bonds," may be redeemed at par at any interest-paying date, and the trustee under the mortgage is authorized to use the sinking fund for the purchase and retirement of bonds, without specifying what class of bonds, the trustee is bound to redeem the serial

(78) West *v.* Dyson, 230 Pa., 619 (1911).

(79) Real Estate Trust Company of Phila. *v.* Riter-Conley Mfg. Co., 223 Pa., 350 (1909).

(80) Real Estate Trust Co. of Phila. *v.* Riter-Conley Mfg. Co., 223 Pa., 350 (1909).

bonds at par, if possible, before purchasing long term bonds at a premium.[81]

In an action by the holder of certain corporate bonds against the trustee, holder of the mortgage security, for damages for the unauthorized satisfaction of the mortgage, a verdict for the plaintiff was sustained where it was conceded that plaintiff left his bonds with the defendant with the mutual understanding and direction that they were not surrendered; that they were to be paid before the mortgage securing them would be satisfied, and that the defendant satisfied the mortgage because its officer, through a failure to recall the facts, was under the impression that the bonds had been surrendered, and the evidence discloses nothing in the defendant's course of conduct, nor in the negotiations preceding the sale, in the contract of sale, or resolution thereafter adopted for the satisfaction of the old mortgage, that deprived the plaintiff of his right to enjoy the protection of the mortgage securing his bonds.[82]

372a. Sinking Funds for the Payment of Mortgages.

A mortgage on coal lands given to a trustee by a mining company to secure an issue of bonds provided that "where all said bonds shall have been purchased, or when the amount in the hands of the trustee shall be equal to the principal and interest of the bonds then outstanding, the payments into the hands of the trustee for a sinking fund shall cease." Held, that the mortgagor might cease to make annual payments into the fund whenever the amount of principal and interest then accrued upon the outstanding bonds is in the hands of the trustee, provided, however, that the mortgagor should continue to pay interest on the outstanding bonds as it accrues and continue to keep in the hands of the trustee an amount of securities sufficient to pay all such bonds.[83]

373. Foreclosure of Corporate Mortgages.

Where the required number of bondholders have directed the trustee under a deed of trust of a Pennsylvania corporation to foreclose, the trustee is not restricted to a scire facias at law, but may file a bill in equity for foreclosure. A court of equity has

(81) Struthers Coal & Coke Co. *v.* Union Trust Co., 227 Pa., 29 (1910).
(82) Nivin *v.* Chester County Trust Co., 231 Pa., 315 (1911).
(83) Lehigh Valley Coal Co. *v.* Girard Trust Co., 231 Pa., 239 (1911).

jurisdiction in such cases not only under its general chancery powers but also under the provisions of the Act of May 4, 1893, P. L. 29. A power of sale in the mortgage does not supersede the remedy by bill.[84]

377. Conflict Between Contractors' Liens and Mortgage Liens.

Where a corporation mortgage is made to secure all the bonds issued under it, and such bonds are issued to raise money for the general purposes of the corporation, and sold in the ordinary course of business without notice to or knowledge by the purchasers of any particular use to which the money is to be applied, the bondholders are entitled, in the distribution of the proceeds of the sale of the property of the company, to priority over mechanics' liens filed for work begun after the mortgage was recorded; and all such bonds are entitled to such priority although some of them were sold after the improvements for which the liens were filed were begun.[85]

390. Power to Declare Dividends Discretionary With Directors.

A bill in equity by a stockholder averring that the officers of the corporation refuse to make any report of profits which, as the complainant alleges on belief, have been earned, and praying for an account and a declaration of dividends, will be dismissed on demurrer.[86]

391. Dividends may not be Declared Impairing the Capital Stock.

A corporation may not contract to pay interest or dividends on its shares of stock in excess of its earnings, unless expressly authorized by law.[87]

The officers of a corporation may be convicted of conspiracy to declare illegal dividends where it appears that during the period within which such dividends were paid, the expenses of the company were more than double the amount of the dividends, and the total receipts were less than the dividends, and that the latter were paid out of the sales of stock of the company.[88]

(84) Girard Trust Co. *v.* Avonmore Land & Improvement Co., 221 Pa., 52 (1908).

(85) Rauch *v.* Island Park Association, 226 Pa., 178 (1910).

(86) Biggert *v.* John D. Biggert Company, 57 Pitts., 31 (1909).

(87) Boas *v.* Montello Brick Co., 3 Berks, 65 (1910).

(88) Commonwealth *v.* Donnelly, 40 Pa. Super. Ct., 116 (1909).

406. Power to Have Succession by a Corporate Name.

"The exclusive right of a corporation to its name is one that of itself carries the presumption of injury by interference, and will, therefore, be protected": Fort Pitt Building and Loan Ass'n. *v.* Model Plan Building and Loan Ass'n., 159 Pa., 308 (1893).

The motives of the person attempting the wrongful appropriation of a corporate name are immaterial.

There is such similarity between the names "The New Method Steam Laundry Company" and "The New Method Damp Wash Laundry Company," that a wrongful use by the respondent, an unincorporated association, of the latter name, will be enjoined at the suit of a corporation entitled to the former name.[89]

A corporation incorporated with the same name as one formerly incorporated will be enjoined from using such name at the suit of such first incorporated company, and the fact that the plaintiff was not in business when the defendant was incorporated does not deprive it of the right to protection.[90]

A corporation cannot obtain an exclusive right to a name generally used to designate a large district of the country, and restrain others from the use of it.[91]

407. Misnomer of Corporations.

Where a corporation, not having the word "company" as a part of its corporate name, is made a defendant in a suit in equity, with that word added to its title, said word may be dropped by amendment, if it appear that the corporation was the one intended to be served, that it was properly served and that the statute of limitations has not barred the action.[92]

In an action of trespass, where the plaintiff's statement improperly describes the defendant as a corporation of the state of Pennsylvania, an amendment may be allowed so as to correctly describe it as a corporation of the state of Maryland, the defendant being already in court and the amendment bringing no new party in the record.[93]

(89) New Method Steam Laundry Co. *v.* Tomlinson, 17 D. R., 362.

(90) Tuckahoe Mineral Springs Co. *v.* Tuckahoe Lithia Water Co., 18 D. R., 987 (1901).

(91) Poconco Pines Assembly *v.* Miller, 229 Pa., 33 (1910).

(92) Rosenbluth *v.* Reis Circuit Co., et al., 36 Pa. C. C., 332 (1908).

(93) Meitzner *v.* Balto. & Ohio R. R. Co., 224 Pa., 352 (1909).

409. Power to Sell Franchises and Property.

A corporation may sell all its property, assets and franchises to another corporation in consideration of long-term bonds secured by a mortgage on the property of both companies, such bonds to be allotted to the stockholders of the vendor company pro rata according to their stockholdings.[94]

Under the Act of April 17, 1876, P. L. 30, a corporation has the absolute power to sell its franchises and assets for a price fixable by the corporation through the votes of a majority of its stockholders, and such sale will not be set aside nor enjoined for mere inadequacy of price where it is not affirmatively shown that a majority of such stockholders acted fraudulently or collusively to deprive the minority stockholders of a fair share of the proceeds of the sale.[95]

A minority stockholder objecting to such sale cannot be compelled to take anything but cash or its equivalent for his interest in the purchase price, and where the equivalent is a promise to pay it must be a promise to pay within a reasonable time, properly secured. Hence where a corporation sells its franchises and property to another, a minority dissenting stockholder cannot be compelled to take for his stock bonds of the purchasing company running for thirty years and secured only by a mortgage on the plant.[96]

Where a company sells and by proper deed conveys all its franchises and property to another company, the selling company ceases to exist under the provisions of the Act of April 17, 1876, Section 5, P. L. 30.[97]

427. Ultra Vires.

A corporation of the first class formed for the promotion of general culture in the interests of Christianity, and not for profit, does not come within the provisions of the Act of June 20, 1901, P. L. 582, relating to the registration of trade-names, etc., and has no standing in a court of equity to protect a trade name used in connection with a garage conducted for profit.[98]

(94) Koehler *v.* St. Mary's Brewing Co., 37 Pa. C. C., 321 (1909).
(95) Koehler et al. *v.* St. Mary's Brewing Co., 228 Pa., 648.
(96) Koehler et al. *v.* St. Mary's Brewing Co., 228 Pa., 648 (1910).
(97) Com. *v.* Lumber City Water Co., 225 Pa., 317 (1909).
(98) Pocono Pines Assembly *v.* Miller, 229 Pa., 33 (1910).

A brewing corporation manufacturing ice to be used in the manufacture of its products, is not performing an *ultra vires* act when it sells an excess of ice necessarily manufactured by it.[98*]

438. Corporations May Hold Real Estate Acquired Under Execution or Taken in Satisfaction of Debts.*

The provisions of an act, entitled "An act to extend the time during which corporations may hold and convey the title to real estate, heretofore bought under execution or conveyed to them in satisfaction of debts, and now remaining in their hands unsold," approved the twenty-second day of May, Anno Domini one thousand eight hundred and seventy-eight, which reads as follows:—

"Whereas, Owing to the depreciation in the value of real estate, many corporations have been obliged to purchase real estate under executions, or take conveyances thereof, in order to save their claims thereon, and by their charters are authorized to hold the same only for a limited time, and owing to such continued depression in prices have been unable to sell and dispose of the same; therefore,—

"Section 1. Be it enacted, &c., That the time during which all corporations are authorized by law and their charters to hold and convey real estate, acquired by them under execution or in satisfaction of debts, be and the same is hereby extended to all property heretofore bought and now held by such corporations, for and during a further period of five years from and after the expiration of the time during which, as aforesaid, they are now so authorized to hold and convey the same,"—be and the same are hereby revived, continued, and extended, in so far as they relate to banking companies, for a period of five years from and after the passage of this act: Provided, however, That nothing in this act shall apply to railroad right of ways.[99]

442. Validation of Conveyances of Manufacturing Companies, the Charters of Which Have Expired.

No exercise of franchise, grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance of lands, tenements and hereditaments, contract or agreement whatsoever, made, executed, and delivered prior to January first, nine-

(98*) Com. *v.* Independent Brewing Co., 14 Dau. Co. Rep., 157 (1911).
*This section was wrongly entitled in the original work.
(99) Act of June 10, 1911, P. L. 871.

teen hundred and nine, by any corporation of this commonwealth, or by the successors of any such manufacturing corporation or land company, shall be deemed, held or adjudged invalid, and defective or insufficient in law, by reason of the expiration of the term of its charter; but all and every such exercise of franchises, grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance, contract, or agreement, so made, executed and delivered, shall be as good, valid, and effectual in law and fact as if the charter of such corporation, or of the successors of such corporation, had not expired or had been renewed and extended: *Provided, however,* That such corporation, or the successors thereof, has accepted the provisions of the Constitution of this Commonwealth, and of the act of Assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four; *And provided further,* That not more than twenty years has elapsed since the expiration of the term of such charter.[100]

454. Estate Taken by Canal Companies Under the Right of Eminent Domain.

The Union Canal Company condemning land under Section 13 of the Act of April 2, 1811, 5 Sm. L. 266, acquired an easement only in the land, for the use of the canal, and when the canal was abandoned, the use and occupancy of the land reverted to the owners of the fee.[1]

457. Consequential Damages.

A company organized for the purpose of supplying power for the manufacture of electricity to be used for public and private lighting, not possessing the right of eminent domain, is liable for damages created by the percolation of water from an artificial water course upon its premises. On an issue to determine damages to plaintiff's land by such seepage, the case is for the jury, where the evidence is conflicting as to whether the flow of water came from defendant's race on to the plaintiff's land, or whether the injury resulted from the interfering agency of water flowing through drains constructed by a railroad company.[2]

(100) Act of April 22, 1909, P. L. 122.

(1) Scholl *v.* Emerich, 36 Pa. Super. Ct., 404 (1908).

(2) Welliver *v.* Irondale Electric Light, Heat & Power Co., 38 Pa. Super. Ct., 26 (1909).

459. Taking of Franchises and the Property of Corporations Possessing the Right of Eminent Domain Under Said Right.

A bridge built by a corporation under the provisions of the Act of June 14, 1873, P. L. (1874) 421, authorizing the construction thereof "for railroad, wagon and other purposes," and the charging of toll "for the use thereof," may not be condemned by the county, where it appears that the corporation occupied the entire bridge with the tracks of a railroad, and permitted the use of it to the public generally as a toll bridge only when it was not in actual use for railroad purposes.[3]

461. Method of Taking Property Under the Right of Eminent Domain.

In all cases in which, under the provisions of this act, any corporation is permitted to take waters, streams, lands, property, materials or franchises for the public purposes thereof, and the said corporation cannot agree with the owner or owners of any such waters, streams, lands, materials or franchises for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, land or materials, which such corporation may enter upon, use or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners no such compensation can be agreed upon, the court of common pleas of the proper county, on application thereto by petition, either by said corporation or by the owner or owners, or any one in behalf of either, shall appoint three discreet and disinterested freeholders of the proper county, and appoint a time, not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained or the property taken, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers, having been first duly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire, in pursuance of the provisions of this act, and having viewed the premises, they shall estimate and determine the quantity, quality and value of said lands, streams or prop-

(3) Nanticoke Bridge, 40 Pa. Super. Ct., 345 (1909).

erty so taken or occupied, or to be taken or occupied, or the materials so used or taken away, as the case may be, and having a due regard to, and making just allowance for, the advantages which may have resulted, or which may seem likely to result, to the owner or owners of said streams, land or materials, in consequence of the making the improvements or conducting the operations of such corporation, or of the construction of works [for] which the property is to be taken; and after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and, if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded, and the costs and expenses incurred shall be defrayed by the said corporation; and each of the said viewers shall be entitled to one dollar and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation.

In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made, either for lands, streams, water, water-rights, franchises or materials, the corporation shall tender a bond, with at least two sufficient sureties, to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the guardian or committee of any one under legal incapacity, the condition [of] which shall be that the said corporation will pay, or cause to be paid, such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon by parties or assessed in the manner provided for by this act: *Provided,* That in case the party or parties claiming damages refuse or do not accept the bond as tendered, the said corporation shall then give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bond to the court of common pleas of the county where the lands, streams, water or materials are, and if approved the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of dam-

ages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question.

The viewers provided for in this section may be appointed before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for; and, upon the report of said viewers being filed in said court, either party, within thirty days thereafter, may file his, her or their appeal from said report to said court. After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and, after final judgment, either party may have a writ of error thereto from the Supreme Court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given connected with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of; and, if allowed, a new view shall be ordered, and, if disallowed, the appeal shall proceed as before provided.[4]

468. Measure of Damages for Taking Property by the Right of Eminent Domain.

Interest, as such, may not be allowed on damages for the condemnation of property under the right of eminent domain, but the jury may consider the lapse of time between the taking of the property and the time of trial as an element of damages.[5]

473. Bond for Payment of Damages.

The approval of a bond in condemnation proceedings by a court is an adjudication that all things necessary for its approval have been done, including the fact that the parties are unable to agree upon a settlement.[6]

Where a water company tenders a bond in proceedings to appropriate waters, and such waters are claimed by another water company, the court will pass upon the sufficiency of the bond.

(4) Act of May 5, 1911, P. L. 112, amending Sec. 41, Act of April 29, 1874, P. L. 104. The amendment consists in the provision for the appointment of three, instead of five, viewers.

(5) Mengell's Executors *v.* Mohnsville Water Co., 224 Pa., 120 (1909).

(6) Burkhard *v.* Penna. Water Co., 58 Pitts., 338 (1910).

there being no objection as to its form or sufficiency, leaving the declaration of the rights of the parties to the proper procedure.[7]

474. Unauthorized Entry.

Where a land owner has knowledge that a pipe line company is laying a pipe line on his land without having tendered him a bond or made any effort to agree with him as to damages, he is not thereafter estopped from suing the company in trespass for damages to his property. He has in such a case the right to waive his constitutional and statutory right to security for his damages, and make claim, in his action in trespass, for permanent injury to his property, as fully as if the company had given security.[8]

478. Manufacturing Corporations—Eminent Domain.

A manufacturing corporation which has undertaken to construct a lateral railroad under the provisions of the Act of May 5, 1832, P. L. 501, has no right to lay its tracks across a public street at grade without the consent of the municipality in which such street is located.[9]

481. Taking of Property by Water Companies.

In a proceeding against a water company to assess damages for injury to a mill property, witnesses of plaintiff who state that they are millers or manufacturers, familiar with the property in question and in a general way with the market values in the neighborhood, may express an opinion as to the value and that there has been a decrease in the supply of water to the mill affecting the operation of the plant.[10]

A water company condemned a right of way through A's land for a pipe line, and some years later condemned other land of A's for additions to its water works. Held, that the first condemnation did not exhaust the company's power, and that its discretion in determining what land was necessary for its purposes would not be interfered with by the court, unless it was shown to have been capriciously or wantonly exercised.[11]

(7) Harwood Coal Co. *v.* Hazleton Water Co., 15 Luz., 114 (1910).

(8) Truby *v.* American Natural Gas Company, 38 Pa. Super. Ct., 166 (1909).

(9) Clifton Heights Borough *v.* Thos. Kent Manufacturing Co., 220 Pa., 585 (1909).

(10) Mengell's Executors *v.* Mohnsville Water Co., 224 Pa., 120 (1909).

(11) Burkhard *v.* Penna. Water Co., 58 Pitts., 338 (1910).

493. Attorney General to Proceed Against Corporations Alleged to Have Neglected Duties Imposed Upon Them by Law.

It seems that the Commonwealth cannot maintain quo warranto proceedings against a corporation because of its failure to pay a tax settled and charged against it.[12]

532. Power to Bring Suit Against the Corporation and Against Others in the Name of the Corporation.

A stockholder may not, as a stockholder, maintain an action at law against his corporation. His remedy is in equity. Nor may a stockholder maintain an action against his corporation for his undivided portion of its assets, or for any specific interest in the corporate property.[13]

541. How Stockholders May Compel Contribution from Other Stockholders.

A bill in equity filed by a stockholder against other stockholders to compel them to contribute their proportionate shares of a judgment recovered against the plaintiff, and paid by him for a debt of the company, is defective unless it show the number of shares held by each of the parties and contains a prayer for discovery. Such a bill must aver in clear terms that the judgment obtained against the plaintiff was for the indebtedness of the corporation. Such an averment may not be supplied by inference.[14]

559. Distribution of Assets of Insolvent Corporations.

Upon the insolvency of a corporation organized for the issue and sale of bonds and other obligations of said company, to be paid for by the purchasers thereof in periodical installments, the contract between the company and the holders of the bonds should be treated as rescinded and the parties be put in the ordinary relationship of debtor and creditor.[15]

Claims for work and materials supplied to an electric railway, necessary to preserve the value of the property, within a reasonable time before the appointment of a receiver, may be given a preference over bondholders in the payment of the funds received from the sale of the property on foreclosure of the mortgage

(12) In re Continental Railroad Company, 12 Dau. Co. Rep., 190 (1909); Op. Atty. Gen.

(13) Boas *v.* Montello Brick Co., 3 Berks, 65 (1910).

(14) Darlington *v.* Clemson, 41 Pa. Super. Ct., 309 (1909).

(15) Com. *v.* Pennsylvania Guarantee Co., 11 Dau., 273 (1908).

thereon, although such claim accrued more than six months prior to receivership. A reasonable time, in the absence of a special understanding, is six months prior to the receivership.[16]

The state may collect taxes due by corporations in the hands of a receiver either out of the income of the company or out of the proceeds of the sale of the property and franchises, and the fact that the receiver has failed to pay such taxes out of the income, or that they have been charged against a mortgage fund, does not confer upon unsecured creditors rights they did not otherwise have.[17]

The owners of a trust fund held by an insolvent corporation are not entitled to preference over general creditors, in the distribution of the assets of the company, unless they trace the fund into some specific property or particular money or account of the insolvent corporation, which had passed into the hands of the receiver or assignee.[18]

In the distribution of the assets of an insolvent corporation where a dividend has been awarded to a corporation previously dissolved, and no evidence has been offered to show to whom the dividend should be paid, the court will direct the receiver to withhold payment thereof until proof has been submitted showing to whom it is due.[19]

Where auditors appointed to distribute the funds of an insolvent corporation have failed in former distributions to award dividends to a proper claim, and the receiver has sufficient funds to pay the dividends due, the court will, upon exceptions to a subsequent report of the auditors, direct the receiver to pay such dividends without referring the report back for redistribution.[20]

Under Equity Rules 93 and 94, a court of equity may, if it choose, appoint an auditor to distribute the moneys of an insolvent

(16) Lehigh Portland Cement Co. *v.* Mauch Chunk etc. Railroad Company, 17 D. R., 735 (1907).

(17) Lehigh Portland Cement Co. *v.* Mauch Chunk etc. Railroad Co., 17 D. R., 735 (1907).

(18) Com. *v.* Union Surety & Guaranty Co., 37 Pa. Super Ct., 167 (1908).

(19) Com. *v.* Union Surety & Guarantee Co., 14 Dau. Co. Rep., 21 (1910).

(20) Com. *v.* Union Surety & Guarantee Co., 14 Dau. Co. Rep., 21 (1910).

corporation among various creditors, after the insolvency of the corporation is established and a receiver is appointed.[21]

560. Appointment of Receivers.

Whenever a receiver of a corporation is appointed by any court of this Commonwealth, on motion of the Attorney General, at the instance of either the Commissioner of Banking or the Insurance Commissioner, such receiver shall forthwith supersede any receiver previously appointed by the decree of any court of this Commonwealth, and shall likewise supersede any assignee or trustee previously appointed by such corporation.[22]

Such superseded receiver, assignee, or trustee shall forthwith pay over and deliver all moneys, securities, assets, and property of such corporation, in his or their custody, possession, or control, to the receiver appointed, as aforesaid, on motion of the Attorney General; and shall likewise file his or their account, in the court having jurisdiction of such superseded receiver, assignee, or trustee, which court shall allow credit for compensative counsel fees and expenses, and for disbursements which shall have been properly earned, incurred or made prior to the appointment of the receiver, made on motion of the Attorney General, as aforesaid.[23]

The court appointing any receiver on the application of the Attorney General shall, on the filing of the accounts of such receivers, refer the same for audit and distribution to a person learned in the law, who is a resident of the county in which such corporation had its principal place of business, and who shall hold the meetings for the purposes of his appointment in said county, and give such notice thereof as the court appointing him shall direct; and said auditor shall pass upon the several items of said account, without exceptions being filed thereto, and with the same effect as if each and every item in said account had been duly excepted to by a party in interest.[24]

(21) Groff *v.* City S. F. & T. Co., 38 Pa. Super. Ct., 567 (1909).

(22) Sec. 1, Act of April 23, 1909, P. L. 167. This act was passed because of the decision in the case of Jones *v.* Lincoln Savings & Trust Company, 222 Pa., 325 (1908), holding that a receiver of a trust company appointed by a court under a stockholder's bill for the preservation of the assets was not superseded by a receiver appointed at the instance of the Attorney General.

(23) Sec. 2, Act of April 23, 1909, P. L. 167.

(24) Sec. 3, Act of April 23, 1909, P. L. 167.

Where a court of one judicial district in the state appoints a receiver for a corporation such officer becomes receiver of every asset of the corporation wherever situated in the state. Where a receiver has been appointed for a corporation in one county, the appointment of an ancillary receiver a few days later by the court of another county is an unauthorized proceeding, and the assets of the corporation in such other county remain under the authority of the court making the original appointment. Where in such case a bank located where the ancillary receiver was appointed refuses to pay over to the original receiver assets of the corporation in its hands, the proper procedure is for such court to order its receiver to demand payment from the bank, and upon its failure to pay him, to institute suit to recover such assets.[25]

On a stockholder's bill against the president and a director of a corporation, in which the corporation itself is a party defendant, to recover illegal profits made on a sale of the company's real estate, a receiver will not be appointed where a receivership will entail heavy expenses on all concerned without effecting any corresponding benefit.[26]

A receiver of a corporation will not be appointed at the instance of a single contract creditor who has not exhausted his remedy at law and reduced his claim to judgment, unless it appear from the answer of the company, filed pursuant to action of the board of directors, that a receiver is necessary to preserve the company's assets; and where such creditor, without having exhausted his legal remedies, applies for a receiver, and the president of the company, without the knowledge or authority of the directors, files an answer joining in the prayer of the creditor for a receiver, a decree issued thereupon will be vacated upon petition of the corporation pursuant to the action of its directors, and the receiver ordered to account to the company.[27]

A debtor of an insolvent corporation, knowing of the insolvency of the corporation, and that an application for a receiver has been made, may purchase a claim against the corporation while the application is pending, and use it as a set-off against the receiver. It is the appointment of a receiver, and not the filing of a bill praying for such appointment, which puts an end to the

(25) Tenth National Bank *v.* Construction Company, 227 Pa., 354 (1910).

(26) Commonwealth T. I. & Tr. Co. *v.* Seltzer, 227 Pa., 410 (1910).

(27) Burton Powder Company *v.* McNally Co., 57 Pitts., 1 (1909).

right of the debtors of an insolvent company to acquire claims against it capable of being set-off against its demands when sued for by the receiver.[28]

560a. Compensation of Receivers.

Foreign creditors of a Pennsylvania trust company filed a bill in equity in the United States circuit court for the western district of Pennsylvania, alleging that the company although having assets largely in excess of its liabilities was unable to realize upon them in time to meet such liabilities as they matured, and asked for the appointment of a receiver, who was thereupon appointed. Afterwards the Attorney General of Pennsylvania filed a petition in the court of common pleas of Dauphin county alleging the insolvency of the trust company and asking for the appointment of a receiver. The trust company in its answer to said petition denied its insolvency and set up the appointment of a receiver by the United States circuit court. Held, that the appointment of a receiver by the United States circuit court was not the result of a controversy between the complainants to the bill as citizens of Ohio and the Pennsylvania corporation, and that the purpose of the Act of February 11, 1895, was to preserve to the state the exclusive jurisdiction and control of state banks and trust companies. A decree was entered declaring the trust company insolvent, and the appointment of a receiver was made.[29]

A receiver of an insolvent corporation is entitled to compensation for his services in resisting the efforts of the officers of the company to prevent him from obtaining the custody of its books and papers to enable him to perform his duties as receiver.[30]

A receiver will not be refused compensation for his services because of mismanagement or delay in closing up the affairs of the corporation, where no actual loss has resulted therefrom and bad faith on his part is not clearly shown.[31]

A receiver and his attorney divided between them the attorney's commission on certain collections. The auditor appointed to pass upon the exceptions to the receiver's account surcharged

(28) United States Brick Co. *v.* Middletown Shale Brick Co., 228 Pa., 81 (1910).

(29) Com. *v.* Iron City Trust Co., 11 Dau. Co. Rep., 31 (1908); 17 D. R., 924.

(30) Com. *v.* Textile Mutual Fire Insurance Co., 11 Dau. Co. Rep., 51 (1908).

(31) Com. *v.* Textile Mutual Fire Ins. Co., 11 Dau. Co. Rep., 51 (1908).

the receiver with the amount of fees thus received, and disallowed his claim for services. Held, that the surcharge made by the auditor was sufficient censure of the conduct of the receiver and his attorney and that a reasonable compensation for the services of the receiver should be allowed.[32]

560b. Removal of Receivers.

An appellate court may review the judgment of a lower court as to the removal or discharge of a receiver, but the action of the court below in refusing to remove the receiver will not be reversed where it appears that the action of the court below was based partly on the ground that application was soon to be made for a termination of the receivership and that the matter complained of could be remedied by a surcharge of the receiver on the filing of his account.[33]

561. Receivers Appointed by United States Courts.[34]

562. Receivers Appointed by Courts of Other States.

Money in the hands of receivers of an insolvent corporation, who were appointed by a court of another state, and who, after their appointment, brought such money into Pennsylvania, may not be attached by a creditor of the corporation in this state. A receiver who has obtained rightful possession of personal property within the jurisdiction of his appointment may not be deprived of such possession, when taking it into a foreign jurisdiction in the performance of his duties, and it may not be there seized by creditors of the debtor residing within such jurisdiction. The rule applies not only to personal property itself, but also to money representing the proceeds of the sale of real property, after the money has been brought into a foreign jurisdiction.[35]

563. Receivers of Foreign Corporations Appointed by Pennsylvania Courts.

The courts of Pennsylvania have jurisdiction to appoint a receiver on behalf of local creditors for an insolvent foreign cor-

(32) Com. *v.* Textile Mutual Fire Ins. Co., 11 Dau. Co. Rep., 51 (1908).

(33) Hilliard *v.* Sterlingworth Railway Supplies Co., 221 Pa., 503 (1908).

(34) See Sec. 560.

(35) Somerset Coal Company *v.* Diamond State Steel Co., 224 Pa., 217 (1909).

poration, all of the property of which is located in this state and whose officers and entire corporate plant and business and all of whose creditors are therein, when the subject matter of the complaint does not relate to the internal management of the corporation.[36]

565. Liens Upon Property Held by Receivers.

Where a receiver of an insolvent corporation was authorized to sell its property free of all liens, and thereafter sale was made and confirmed, and it subsequently appeared there was internal revenue tax due the United States, which was a lien on the property, the purchaser is entitled to equitable relief, and the receiver will be ordered to pay said tax.[37]

566. Suits by Receivers.

A receiver in Pennsylvania may not sue in his own name on a cause of action which accrued before his appointment; nor should the action be brought in the name of the corporation of which he is the receiver to his use as receiver. Such an action should be brought in the name of the corporation "in the hands of a receiver," as "———company, in the hands of A., Receiver, *v.* John Doe." [38]

The receiver of an insolvent corporation is not required, in the absence of a rule of court demanding the same, to file an affidavit of defense in an action upon a contract entered into by the corporation. Consequently, when an affidavit is filed by him in such case, judgment may not be taken for want of a sufficient affidavit.[39]

In an action by a receiver for goods sold and delivered by the corporation before his appointment, the defendant may offer proof of damages sustained through the failure of the corporation to deliver other goods to him, although he made no demand for the delivery thereof before the receiver was appointed, if it appear that before such appointment defendant wrote to the company inquiring about the time of delivery, and received a letter in reply stating when the delivery would be made. The defendant had a right under such circumstances to rely on the letter,

(36) Flory Mfg. Co. *v.* Bangor Slate Co., 18 D. R., 564 (1909).
(37) Miller *v.* Distilling Company, 22 York, 183 (1909).
(38) Hyneman, Receiver *v.* George W. Ruch & Co., 18 D. R., 68 (1909).
(39) Brandenberg & Company *v.* Cox, 19 D. R., 17 (1909).

and it was not necessary for him to make a formal demand for delivery.[40]

A bill by a receiver is not demurrable, because it does not show notice to the defendant of the application to the court by the receiver for permission to sue the defendant.

Where on a bill by the receiver of a bank to compel the repayment by the officers of the bank of certain moneys, the wrong complained of is the dishonest action of such officers, resulting in their defrauding the bank of a specific sum of money, and equity has no jurisdiction, inasmuch as equity will make a pecuniary decree only where it is incident to a bill setting up some recognized ground of equitable jurisdiction, and in such case an allegation of fraud, especially when it relates to the sale of personal property and the relief sought is a money decree for a fixed sum, is insufficient to give jurisdiction.[41]

While the general rule is that a receiver has no greater rights than those of his corporation itself, and the defendant in a suit brought by him may take advantage of any defense that might have been made if the suit had been brought by the corporation before its insolvency, yet when an act has been done in fraud of the rights of the creditors of the insolvent corporation, the receiver may sue for their benefit, even though the defense set up might be valid as against the corporation itself. Hence in an action on a promissory note by the receiver of an insolvent bank, an affidavit of defense is insufficient which avers substantially that the defendant made and delivered said note to the bank in furtherance of a scheme to deceive the bank examiner, under a promise made to him by the bank that he would not be held liable upon the note.[42]

A receiver may acquire no greater interest than his insolvent had in the estate, and choses in action pass to the receiver subject to the equitable right to set off debts existing at the time of his appointment.[43]

In an action by a receiver of a foreign corporation against a stockholder resident in Pennsylvania to recover an assessment authorized by a decree of a court having jurisdiction of the affairs of the corporation, the defendant may not question the find-

(40) Kuebler *v.* Haines, 229 Pa., 274 (1910).
(41) Hosack *v.* Greer, 57 Pitts., 323 (1909).
(42) Lyons *v.* Benny, 230 Pa., 117 (1911).
(43) Barclay *v.* Edlis Barber Supply Co., 39 Pa. Super. Ct., 482 (1909).

ings of insolvency nor the foundations of the assessments, but he may set up any defense personal to himself involving his rights as a bona fide holder of the stock.[44]

565. Liens Upon Property Held by a Receiver.

A receiver appointed on a creditors' bill has the right of a levying creditor and takes the property freed from the lien of any conditional sale.[45]

566a. Sales by Receivers.

From and after the passage of this act, the courts of common pleas of the several counties of this Commonwealth, in all cases where, under existing laws, the court has the power to order the sale of real estate of any corporation in the hands of a receiver duly appointed, for the payment of debts and for other purposes, the said court may decree and approve a private sale, if in the opinion of the court, under all the circumstances, a better price can be obtained at private than at public sale, as where the interest shall be undivided, or for any other sufficient cause.[46]

At least ten days' notice of the intention to present such petition to the court shall be given by the petitioner to all known creditors and other parties in interest, previous to the presentation of the same to the court.[47]

570. Where Receivers are Authorized to Operate Works.

Where the general sales agent of a corporation sends in orders which are accepted by the company, but before they are filled the company goes into the hands of a receiver, the latter may, if he does not adopt the general sales contract with the agent, fill the orders on hand without being liable as receiver for the commissions of the agent under the contract. As to such commissions the agent is in the same position as other creditors.[48]

579. Existence of Corporations Admitted Unless Put in Issue.

In every suit or judicial proceeding in this Commonwealth, to which a corporation is a party, the existence of such incorpora-

(44) French *v.* Harding, 46 Pa. Super. Ct., 363 (1911).
(45) Bullock Elec. Mfg. Co. *v.* Traction Co., 4 Leh., 12 (1910).
(46) Sec. 1, Act of May 11, 1911, P. L. 261.
(47) Sec. 2, Act of May 11, 1911, P. L. 261.
(48) Brandenberg *v.* Coxe, 228 Pa., 212 (1910).

tion shall be taken to be admitted, unless it is put in issue by the pleadings.[49]

586. Service of Summons in Actions for Damages for Trespass or Other Injury.

Under the 42d Section of the Act of June 13, 1836, P. L. 568, a corporation which has been guilty of a trespass or injury, but has no office or place of business in the county where the trespass or injury was committed, may be summoned by process running beyond the limits of said county, and served upon the chief officer of the corporation in any part of the state. The Act of July 9, 1901, P. L. 614 (Section 587, *infra*), relates only to methods of service, and makes no substantial change in the jurisdiction of courts nor in the liability of corporations to be sued.[50]

587. Service of Writs of Summons, Etc.

A constable's return upon a writ against a corporation that he served it on the defendant corporation "by handing a true and attested copy to A, clerk at their office," does not comply with the Act of July 9, 1901, P. L. 614.[51]

The "place of business" of defendant, as used in the Act of July 9, 1901, P. L. 614, means the permanent location at which the business of the corporation is done, and not the temporary location of workmen engaged in some contract, but where a sheriff's return of service of a writ of summons is full and explicit on its face, it may not be set aside upon a rule and evidence showing that service was not in fact made at defendant's place of business, a plea in abatement being necessary for such purpose.[52]

A return which does not show that the service was made at the place of business of the defendant company, or that the person

(49) Act of June 9, 1911, P. L. 723. This act was passed because it was held in Empire Mfg. Co. *v.* Hench & Drumgold, 15 D. R., 659, that the Act of June 24, 1885, P. L. 149, which is worded precisely as the above act, is limited in its application by its title to cases where the defendant is a corporation and does not apply to cases where the plaintiff is a corporation. The title of the above act is "An act dispensing, in judicial proceedings to which a corporation is a party, with proof of incorporation of *either plaintiff or defendant,* when not put in issue."

(50) Musselman *v.* York Bridge Company, 35 Pa. C. C., 532 (1908).

(51) Van Sickle & Warner Co. *v.* Jacobson Gas Engine Co., 20 D. R., 68 (1910); 11 Del., 252; Hazleton Overall Co. *v.* Guzinsky, 6 Schuyl., 318.

(52) Fahs *v.* York Bridge Company, 18 D. R., 381 (1908).

upon whom the summons was served was in charge of the business of such company in the county, or why service was not made on the president, secretary, treasurer, cashier, chief clerk or other officer, or that an attempt at service on either of these had failed, is defective and will be set aside.[53]

A summons served on a yard master at a point in the county where two railroad companies maintain railroad yards for the interchange of freight and a telegraph office and keep joint records, is a service on the company, "if upon inquiry at the place of business, the residence of one of the officers within the county is not ascertained, or if for any cause an attempt to serve at the residence given has failed." [54]

Where a sheriff's return of service of process on a corporation sets forth that the service was made on a person described as being the "chief clerk," but does not state in what county or state the service was made, or show that the person served was such a chief clerk as might properly be served under the act, inquiry as to the facts in the case may be made, and if it appear that the person served was in fact an inferior clerk, the service will be set aside. No contradiction, however will be permitted of the averment that a true copy of the writ was served.[55]

A writ of service of summons upon a corporation by "handing a true and attested copy" of the writ to an agent of the company does not show a proper service.[56]

588. Service of Writs of Quo Warranto and Mandamus.

Service of the writ of quo warranto and the writ of mandamus may be made upon the defendant wherever found, as in the case of a summons, in proceedings in quo warranto. Where the sheriff of the county in which a corporation had its principal office, or where from the records in the office of the Secretary of the Commonwealth or of the Auditor General it appears that said office was intended to be located, returns that he is unable to locate such corporation, or is unable to find the principal officers thereof, the court in which such proceedings in quo warranto are then

(53) Smith *v.* Western Maryland R. R. Co., 35 Pa. C. C., 701 (1909).

(54) Smith *v.* Western Maryland R. R. Co., 35 Pa. C. C., 701 (1909).

(55) Hudelson *v.* Lehigh Valley R. R. Co., 36 Pa. C. C., 245 (1908); 19 D. R., 775.

(56) De la Rigaudiere *v.* Standard Mutual Life Insurance Co., 19 D. R., 618 (1910); 37 Pa. C. C., 521.

pending shall order and direct notice of a time when such corporation shall appear and make return, and such order shall be published in at least two newspapers of said county, once a week for a period of three weeks, and, upon due proof of said publication having been made, the court shall thereupon proceed to a hearing in said cause as if the said corporation had been actually served.[57]

Under the Act of July 9, 1901, P. L. 614, a writ of alternative mandamus may be served upon a defendant wherever found in the same manner as a summons. Section 5 of said Act of June 8, 1893, requiring personal service of an attested copy upon a defendant is repealed by the said Act of July 9, 1901.[58]

596. Service of Process on Stockholders in an Action for Unpaid Installments on Capital Stock or for Statutory Liabilities.

The Act of May 14, 1874, P. L. 146, providing for service of process upon non-resident stockholders of a corporation in the counties of their residence, is not repealed by the Act of July 9, 1901, P. L. 614, relating to service of writs of summons, attachment executions and scire facias. (Sect. 587, Eastman on Corporations, Second Edition).

In an action instituted in Allegheny county for the recovery of a stock subscription due to a corporation domiciled in said county, service may be made upon the defendant, a resident of Lackawanna county, by the sheriff of Lackawanna county, under the provisions of the Act of May 14, 1874, P. L. 146.[59]

600. Service of Process Upon Foreign Corporations.

The provisions of the Act of July 9, 1901, P. L. 614, must be strictly followed. "Leaving a true and attested copy," is not equivalent to "handing a true and attested copy."[60]

In a suit before an alderman where the record shows the defendant to be a foreign corporation and the summons is made returnable more than four days after issuance, judgment against the defendant will be reversed upon certiorari.[61]

(57) Act of May 11, 1911, P. L. 264, amending clause 13, Act of July 9, 1901, P. L. 619.

(58) Tobias *v.* National Slavonic Society, 20 D. R., 427 (1910).

(59) Coney Island Amusement Co. *v.* Philips & Wells, 18 D. R., 789 (1908).

(60) Fenner *v.* Prudential Ins. Co., 19 D. R., 15 (1909).

(61) Penn-Wyoming Copper Co. *v.* Mackey, 56 Pitts., 434 (1909).

The scope of the Act of July 9, 1901, P. L. 614, is limited to a regulation of service only and applies to foreign corporations as well as to domestic ones. The words in said act "county wherein it (the writ) was issued" and "county where the cause of action arose," mean county wherein the writ was legally issued, and where the location of property or business gave jurisdiction to the courts under existing law; but a writ issued in one county and served upon a foreign corporation in another county, will be quashed where it appears that said company transacted no business in the county in which the writ was issued, and had no property, agency or place of business therein.[62]

A foreign corporation engaged in the business of transporting passengers, mails and freight upon the high seas is not doing business in Pennsylvania so as to be subject to service of process, although it maintains an agency for the sale of tickets in Philadelphia, and it is immaterial that the agent in charge of such agency was once the registered agent of the company in the state, if the appointment had been legally revoked at the time the suit was brought, and, on a plea in abatement, setting forth the foregoing facts, judgment will be rendered for the defendant.[63]

602. Suits Against Insurance Companies.

Section 6 of the Act of April 8, 1851, P. L. 353, relative to the service of process upon insurance companies transacting business in any county of the state, is repealed by the Act of July 9, 1901. P. L. 614.[64]

603. Service of Process on Foreign Insurance Companies.

The Act of April 22, 1909, P. L. 120, was repealed by the 33d section of the Act of June 1, 1911, P. L. 607. See Secs. 1949, 1950.

A return of service of process upon a foreign insurance company under the Act of April 22, 1909, P. L. 120, must set forth that such service was made at an office of the company. Not decided whether service must be upon the registered agent.[65]

(62) Frick & Lindsay Co. *v.* Maryland, Penna., etc. Co., 44 Pa. Super. Ct., 518 (1910).

(63) Fisher *v.* Cunard S. S. Co. Ltd., 18 D. R., 1072 (1909).

(64) De la Rigaudiere *v.* Standard Mut. Life Ins. Co., 19 D. R., 618 (1910); 37 Pa. C. C., 521.

(65) Southard *v.* Home Life Insurance Company of America, 19 D. R., 669 (1910).

606. Chancery Jurisdiction Over Corporations.

The several courts of common pleas, beside the power herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery jurisdictions as are now vested by law in the several courts of common pleas of this Commonwealth or as may hereafter be conferred upon them by law.[65*]

The . . . . . several courts of common pleas, shall have the jurisdiction and powers of a court of chancery, so far as relates to: . . . . . .

IV. The control, removal and discharge of trustees, and the appointment of trustees and the settlement of their accounts.

V. The supervision and control of all corporations other than those of a municipal character . . . . . .[65**]

607. Suits in Equity by or Against Corporations.

A petition to intervene in a class bill by a minority stockholder to restrain a sale of corporate property will be dismissed where it appears that the petitioner had two months' notice after action was taken before filing his petition to intervene or instituting any other proceeding.[66]

607a. Suits Against Corporations on Bonds on Which They Are Sureties.

When any corporation, whether of this or any other state, shall become surety in a bond given for the faithful performance of any duty or contract by any person, partnership, or corporation as principal, suit upon said bond, against such corporation as surety, may be brought in the county in which such duty or contract was to be performed, or in the county in which such principal resided or had his or its principal place of business at the time of the execution of such bond.[67]

Service of process may be made by the sheriff of the county in which suit is brought, by deputizing the sheriff of the county wherein the defendant in such suit, or its registered agent, has its principal place of business, or resides for that purpose. And it is hereby made the duty of the sheriff of a county, so deputized

(65*) Article V, Section 20, Constitution of Pennsylvania.
(65**) Section 13, Act of June 16, 1836, P. L., 789.
(66) Struber's Appeal, 229 Pa., 184 (1910).
(67) Sec. 1, Act of March 22, 1911, P. L. 23.

by the sheriff of the county in which such suit is brought, to serve the process, and make due return of service thereof to the sheriff by whom he has been deputized.[68]

668. Injunctions.

The visitorial or supervisory power of the state over corporations created by the legislature will always be exercised, in proper cases, through the medium of the courts of the state, to keep such corporations within the limits of their lawful powers, and to correct and punish abuses of their franchises, and a court of equity has jurisdiction under the Act of June 19, 1871, P. L. 1360, to enjoin a trade association organized as a corporation of the first class under the Act of April 29, 1874, P. L. 73, from enforcing by-laws by which the members of the association were held bound to refuse to sell "for spot cash" to any persons indebted to members of the association, and by which provision was made for an arbitration committee consisting only of members to pass upon the validity of the claims of members against persons to whom they had sold goods and whom they had blacklisted as delinquent.[69]

611. Actions by Stockholders in the Name of the Corporation.

A bill brought by an individual stockholder in his own name to recover moneys wrongfully taken from the corporation will be dismissed where the only application to the officers of the company to bring suit in its name was by a mere notice addressed to the president and attorney of the company notifying them to bring suit, and indicating only inferentially the parties against whom action was to be taken.[70]

614. Suits by or Against Corporations Generally.

In an action against a corporation as endorser of promissory notes, where the case as originally presented shows that the notes were endorsed by the treasurer in the name of the company, but does not show his authority to endorse, the statement of claim may be amended by averring a course of dealing between the plaintiff and defendant whereby the latter is estopped from set-

(68) Sec. 2, Act of March 22, 1911, P. L. 23.

(69) Arbour *v.* Pgh. Produce Trade Assn., 44 Pa. Super. Ct., 240 (1910).

(70) Pellio *v.* Bull's Head Coal Company, 231 Pa., 157 (1911). See also Same Parties 224 Pa., 379 (1911).

ting up want of authority on the part of its treasurer to execute the notes, and alleging that the execution of the notes had been ratified by the defendant which had received the consideration for them.[71]

The receiver of an insolvent corporation is not required, in the absence of a rule of court demanding the same, to file an affidavit of defense in an action upon a contract entered into by the corporation, consequently, when an affidavit is filed by him in such case, judgment may not be taken for want of a sufficient affidavit.[72]

617. Pleadings.

Where the plaintiff is a foreign corporation duly registered and authorized to do business in Pennsylvania and having a store and salesroom therein, it may verify its statement of claim by the affidavit of the manager of said store who is familiar with the transaction involved in the suit.[73]

619. Bail on an Appeal from Board of Arbitrators.

A foreign corporation need give bail only for costs.[74]

642. Purchasers of Property and Franchises of Corporations May Become Bodies Corporate.

Whenever material, rolling-stock or property, whether located wholly or partly within this state, and franchises, or all or any part of such material, rolling-stock, property and franchises, of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation created by or under any law of this state, or of this and any other state or states, shall be sold and conveyed, under and by virtue of any process or decree of any court of this state or of the United States, or under or by virtue of a power of sale contained in any mortgage or deed of trust, without any process or decree of a court in the premises, the person or persons for or on whose account such material, rolling stock, property, and fran-

(71) First National Bank of Bangor *v.* American Bangor Slate Company, 229 Pa., 27 (1910).

(72) Brandenberg & Company *v.* Cox, 19 D. R., 17 (1909).

(73) De Witt Water Cloth Company *v.* Griffith, 45 Pa. Super. Ct., 273 (1911).

(74) Musser *v.* Pittsburgh Mica Co., 36 Pa. C. C., 513.

chises of any gas, water, coal, iron, steel, lumber, oil, or mining, or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation created by or under any law of this state or of this state and any other state or states, so sold and conveyed, may be purchased. shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claims, and demand, in law and equity, of, in and to such material rolling-stock, property, or franchise, so sold and conveyed, of any gas, water, coal, iron, steel, lumber, oil, or mining, or manufacturing, transportation, or telegraph company, or any railroad, canal, turnpike, bridge or plank road, or of any corporation created by or under any law of this state, or of this state and any other state or states, with the appurtenances, and with all the rights, powers, immunities, privileges, and franchises of the corporations as whose the same may have been sold, and which may have been granted to or conferred thereupon by any act or acts of Assembly whatsoever, in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporations by any such act or acts, except so far as the same are modified hereby, or have been by any amendments or supplements thereto or modifications thereof; and with all the rights, powers, immunities, privileges, and franchises granted to or conferred by acts now existing upon corporations of a similar kind, and subject to all restrictions imposed by statute, except as subsequently modified, or modified hereby; and the person or persons purchasing, for or on whose account any such material, rolling-stock, property, and franchises of any gas, water, iron, steel, lumber, oil, or mining, or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporations created by or under any law of this state or of this state and other state or states, so sold and conveyed, may have been purchased, shall meet, within thirty days after the conveyance thereof shall be delivered,—public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held,—and organize said new corporation by electing a board of directors, consisting of not less than five nor more than fifteen (to continue in office until the first Monday succeeding such meeting, when, and annually thereafter on the said day,

a like election for directors shall be held, the directors so elected to serve for one year and until their successors are elected, unless the directors shall be divided into not more than four classes, in which case the term of office of one class shall expire on each first Monday of May thereafter), and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, without being restricted to the amount theretofore issued by the corporation whose property and franchises had been sold. Not in excess, however, of the aggregate amount of the capital stock authorized to be issued by the corporation whose property and franchises had been sold, together with the amount of the bonded indebtedness of such corporation outstanding at the time of the sale, and of any receiver's certificate or other receiver's indebtedness necessary to be paid, and the amount that will represent all further moneys contributed to such new or reorganized corporation. The said stock thus issued by the said new corporation may consist wholly of common stock, or partly of common stock and partly of preferred stock; and the whole, or any part thereof, may be issued as fully paid stock, in payment or part payment for the property so purchased. Said new corporation shall have power and authority to make and issue certificates therefor, in shares of not more than one hundred dollars each; and may at any time thereafter create and issue preferred stock to such an amount and on such terms as such corporation may deem necessary; and, from time to time, may issue bonds to any amount, and may secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part or parts thereof: *Provided,* That no coal, iron, steel, lumber, or oil, or mining, manufacturing, transportation, or telegraph company, shall have the benefit of this act, unless it shall have previously filed with the Secretary of State its acceptance of all the provisions of the Constitution, as provided by law.[75]

663. Consolidation and Merger of Corporations Incorporated Under General or Special Acts.

The merger and consolidation of railroad companies was provided for by the Act of May 16, 1861, P. L. 702, and it was held

*See Sect. 81.

(75) Act of June 20, 1911, P. L. 1092, amendatory of the Act of April 27, 1909, P. L. 175, which amended Sec. 1, Act of May 31, 1887, P. L. 278.

that city passenger railway companies were railroads within the meaning of the said act. The Act of May 29, 1901, P. L. 349, was entitled, "An act supplementary to an act entitled, 'An act to provide for the incorporation and regulation of certain corporations,' approved the 29th day of April, 1874; providing for the merger and consolidation of certain corporations." The first section of the said act, however, provided that not only corporations formed under the Act of 1874 might be merged under it but also corporations organized under any other act of Assembly. Former Attorney General Carson held that railroad and passenger railway companies might be merged under said act,[76] but his successor held,[77] that only corporations formed under the Act of 1874 and its supplements may be merged under it.

The following act is applicable to all corporations whether formed under general or special acts, except as otherwise provided therein:

It shall be lawful for any corporation, now or hereafter organized under the provisions of any general or special act of Assembly authorizing the formation of any corporation or corporations, to merge its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made: *Provided,* That nothing in this act shall be construed so as to permit railroad, canal, or telegraph companies, which own, operate, or in any way control, parallel or competing roads, canals, or lines, to merge or combine: *Provided further,* That nothing in this act contained shall extend or enlarge beyond its former territorial limits the exclusive franchise of any gas or water company; and that the merger or consolidation of water companies shall be subject to the provisions of the act, entitled "An act to require all water and water-power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing property and franchises of any other

(76) Bellevue & Perrysville Street Railway Co., 32 Pa. C. C., 243 (1906).

(77) Oxford, West Grove & A. Street Railway Co., 35 Pa. C. C., 92 (1908); 18 D. R., 33; 11 Dau. Co. Rep., 127.

such company, to designate the exact source of their supply of water or water-power; and to require all existing water and water-power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as represents the appropriation of streams, rivers or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law,' and providing the manner in which water and water-power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water-power," approved the seventh day of June, Anno Domini one thousand nine hundred and seven.[78]

663a. Procedure.

Said merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers, herein set forth; to-wit,—

First. The directors of each corporation shall enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations; prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consolidation and merger; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided.

Second. Said agreement shall be submitted to the stockholders of each of said corporations, at separate special meetings or at any annual meetings, of the time, place and object of which respective meetings due notice shall be given by publication, once a week for two consecutive weeks before said respective meetings,

(78) Sec. 1, Act of May 3, 1909, P. L. 408.

in at least one newspaper in the county or in each of the counties in which the principal office of said respective corporations shall be situate,—excepting in the case of the merger or consolidation of corporations which, upon their original incorporation, are required by the Constitution to publish notice of intention to incorporate for a longer period than two weeks, in which case notice by publication shall be as required by the Constitution,*—and at said meetings the said agreement of the directors shall be considered, and a vote of the stockholders in person or by proxy shall be taken, by ballot, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger and consolidation, then that fact shall be certified by the secretary of each corporation, under the corporate seal thereof, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the Secretary of the Commonwealth, who shall forthwith present the same to the Governor for his approval, and when approved by the Governor the said agreement shall be deemed and taken to be the act of consolidation of said corporation.[79]

663b. Powers of Consolidated Corporation—Letters Patent—Bonus—Payment of All Taxes.

Upon the filing of said certificates and agreement, or copy of the agreement, in the office of the Secretary of the Commonwealth, and upon the issuing of new letters patent thereon by the Governor, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges and franchises theretofore vested in each of them, and all the estate and property, real and personal, and rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed: *Provided,* That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts, duties and liabilities of each of said constituent corporations shall

*See Sect. 81.

(79) Sec. 2, Act of May 3, 1909, P. L. 408.

thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the Governor of the Commonwealth new letters patent, and shall have paid to the State Treasurer a bonus as prescribed by law upon all its capital stock in excess of the amount of capital stock of the several corporations so consolidating, upon which the bonus required by law has been theretofore paid: *And provided further,* That new letters patent of such consolidated corporations shall not be issued by the Governor of the Commonwealth, until each and every corporation entering into and forming the consolidated corporation shall have filed with the Secretary of the Commonwealth a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed merger, and that all taxes due the Commonwealth of Pennsylvania have been paid, up to and including said date.[80]

663c. Evidences of Merger.

A certified copy of said certificate and agreement, or copy of agreement, so to be filed in the office of the Secretary of the Commonwealth, shall be evidence of the lawful holding and action of such meetings, and of the merger and consolidation of said corporations.[81]

663d. Dissenting Stockholders.

If any stockholder or stockholders of any corporation, which shall become a party to an agreement of merger and consolidation hereunder, shall be dissatisfied with or object to such consolidation, and shall have voted against the same at the stockholders' meeting, it shall and may be lawful for any such stockholder or stockholders, within thirty days after the adoption of said agreement of merger and consolidation by the stockholders, as herein provided, and upon reasonable notice to said corporation, to apply by petition to any court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge

(80) Sec. 3, Act of May 3, 1909, P. L. 408.
(81) Sec. 4, Act of May 3, 1909, P. L. 408.

of said court in vacation, if no such court sits during said period, to appoint three disinterested persons to estimate and appraise the damages, if any, done to such stockholder or stockholders by said consolidation. Upon such petition, it shall be the duty of said court or judge to make such appointment; and the award of the persons so appointed, or of a majority of them, when confirmed by the said court, shall be final and conclusive; and the persons so appointed shall also appraise the share or shares of said stockholders, in the said corporation, at the full market value thereof, without regard to any appreciation or depreciation in consequence of the said consolidation; which appraisement, when confirmed by the said court, shall be final and conclusive; and the said corporation may, at its election, either pay to the said stockholder or stockholders the amount of damages so found and awarded, if any, or the value of the stock so ascertained; and upon the payment of the value of the stock, as aforesaid, the said stockholder or stockholders shall transfer the stock so held by them to the said corporation, to be disposed of by the directors thereof or to be retained for the benefit of the other stockholders; and in case the value of said stock, as aforesaid, shall not be so paid within thirty days after the said award shall have been confirmed by said court, the damages so found and confirmed shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable.[82]

663e. Merger and Consolidation of Motor Power Companies with Street Railway Companies.

It shall be lawful for any motor power company, now or hereafter organized under any act of Assembly authorizing the formation of such corporations, to merge and consolidate its corporate rights, franchises, powers, and provileges with and into those of any street railway company, now or hereafter organized under any act of Assembly of this Commonwealth, so that, by virtue of this act, such corporations may consolidate, and so that all the property, rights, franchises, and privileges, then by law vested in either of such corporations so merged, shall be transferred to and vested in the corporation into which such merger shall be made.[83]

(82) Sec. 5, Act of May 3, 1909, P. L. 408.
(83) Sec. 1, Act of June 15, 1911, P. L. 963.

663f. Procedure.

Said merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers, herein set forth; namely,—

I. The directors of each corporation may enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations: prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consolidation and merger, but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporation in the manner hereinafter provided.

II. Said agreement shall be submitted to the stockholders of each of said corporations at separate special meetings, of the time, place, and object of which respective meeetings due notice shall be given by publication, once a week for two successive weeks before said respective meetings, in at least one newspaper in the county, or each of the counties, in which the principal offices of said respective corporations shall be situate; and at said meetings the said agreement of the directors shall be considered, and a vote of the stockholders, in person or by proxy, shall be taken by ballot, for the adoption or rejection of the same—each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger, and consolidation, then that fact shall be certified by the secretary of each corporation, under the seal thereof; and said certificates, together with the said agreement, or a copy thereof, shall be filed in the office of the Secretary of the Commonwealth, whereupon the said agreement shall be deemed and taken to be the act of consolidation of said corporation.[84]

(84) Sec. 2, Act of June 15, 1911, P. L. 963.

663g. Powers of Consolidated Corporation—Letters Patent—Bonus—Payment of All Taxes.

Upon the filing of said certificates and agreement, or copy of agreement, in the office of the Secretary of the Commonwealth, the said merger shall be deemed to have taken place, and the said corporations to be one corporation, under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises theretofore vested in each of them; and all the estate and property, real and personal, and all the rights of action, of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed:

Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired; and all debts, duties and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the Governor of the Commonwealth new letters patent, and shall have paid to the State Treasurer a bonus of one-third of one per centum on all its corporate stock in excess of the amount of the capital stock of the several corporations so consolidating, upon which the bonus required by law had been theretofore paid:

And provided further, That new letters patent of such consolidated corporation shall not be issued by the Governor of the Commonwealth until each and every corporation entering and forming the consolidated corporation shall have filed with the Secretary of the Commonwealth a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed, and that all taxes due the Commonwealth of Pennsylvania have been paid.[85]

663h. Evidence of Merger.

A certified copy of said certificate and agreement, or copy of agreement, so to be filed in the office of the Secretary of the

(85) Sec. 3, Act of June 15, 1911, P. L. 963.

Commonwealth, shall be evidence of the lawful holding and action of such meetings and of the merger and consolidation of said corporations.[86]

6631. Dissenting Stockholders.

If any stockholder or stockholders of any corporation, which shall become a party to an agreement of merger and consolidation hereunder, shall be dissatisfied with or object to such consolidation, and shall not have voted in favor of the same at the stockholders' meeting, it shall and may be lawful for any such stockholder or stockholders, within thirty days after the adoption of said agreement of merger and consolidation by the stockholders as herein provided, and upon reasonable notice to said corporation, to apply by petition to the court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge of said court in vacation, to appoint an assessor or assessors to appraise the value of the share or shares of said dissatisfied and objecting stockholder or stockholders in the said corporation, which appraisement, when made, and confirmed by said court, shall be final and conclusive; and the said corporation shall thereupon pay to the said stockholder or stockholders the value of the stock so ascertained, and, upon the payment of the value of the stock as aforesaid, the said stockholder or stockholders shall transfer the stock so held by them to the said corporation; and, in case the value of said stock as aforesaid shall not be so paid within thirty days after the said award shall have been made, and confirmed by said court, the said award and assessment, so found and confirmed, shall be filed in the office of the prothonotary of said court as a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable.[87]

674. Dissolution of Corporations or Commissions, Not for Profit, Incorporated to Maintain Turnpikes and Public Roads.

The several courts of common pleas be and they are hereby authorized to decree the dissolution of corporations and commissions, not for profit, heretofore or hereafter incorporated for the purpose of repairing, maintaining, and operating turnpike and other public roads, with the right to collect toll thereon and to

(86) Sec. 4, Act of June 15, 1911, P. L. 963.
(87) Sec. 5, Act of June 15, 1911, P. L. 963.

levy tax for maintenance of such roads and the payment of the interest and principal of indebtedness legally created; to determine the manner in which the affairs of such corporations and commissions may be wound up, and to apportion and adjust the assets and the liabilities of such corporations and commissions to and among the municipalities in which such turnpike or other public road shall lie.[88]

674a. Petition—Examination—Decree—Freeing of Highway—Apportionment of Assets and Liabilities.

Upon presentation of a petition by the directors, commissioners, or trustees, or a majority of them, of any such corporation or commission, to the court of common pleas, or in vacation to the judge thereof, within whose district a turnpike or other public road shall be wholly, or the greater part thereof, located, setting forth the location and character of the road, the length thereof, and—where located in more than one city, borough, or township —the length of the parts of such turnpike, or other public road, in each of the several municipalities, and that they are of the opinion that the corporation or commission should be relieved of the duty of repairing and maintaining and operating the road under its control, and that it is to the public interest that the control thereof shall be surrendered by the said corporation; and further setting forth a full statement of the indebtedness of the corporation or commission, the manner in which and by what authority said indebtedness was incurred, and whether said corporation or commission is empowered by law to levy and collect road-taxes, and, if so, the amount and rate of such taxes and the purpose for which the same are authorized to be levied and collected, and a full statement of all the assets of said corporation or commission and the nature or character and the amount of each, and such other matters as may be necessary to inform the court fully as to the status of the corporation or commission, and the condition of the turnpike or other public road under its control,—the court may, upon such notice as the court may direct to be given to the public authorities in charge of highways in such townships, boroughs, or cities, in which such road or any part thereof is located, and after such examination of the truth of the matters alleged in the petition as they may deem requisite, make a decree

(88) Sec. 1, Act of May 3, 1909, P. L. 378.

removing said turnpike or other public road from the authority and control of such corporation or commission, and declaring the same to be a free public highway, to be controlled and maintained as other highways in cities, boroughs, and townships are controlled and maintained; and the intent or meaning of this act is hereby declared to be, that the said road shall become a public highway of the city or township in which the same shall be located, and, where located in two or more municipalities, that each of the several parts of such turnpike or other public road shall become a public highway of the municipality in which it shall be located; and that the public authorities of said municipality or municipalities shall have power and authority to levy and collect road-taxes, in the manner provided by law, for the maintenance, repair, and improvement of the said turnpike or other public road, or parts thereof, upon all the subjects of taxation within the territorial limits of said municipality; and the court shall further make a decree dissolving the said corporation or commission, and discharging the officers, directors, commissioners, or trustees, as the case may be; in which decree the court shall set forth the length of said turnpike or other public road, and the length of the parts thereof in each of the several cities, boroughs, or townships in which the same may be located, and a full statement of all the assets and liabilities of such corporation or commission. And thereupon, all and singular, the assets and property, real, personal and mixed, and all debts due on whatever account, and all other things in action, belonging to said corporation or commission, shall become vested in, and all debts, liabilities, and obligations of said corporation or commission shall henceforth attach to, said city, borough, or township, as the case may be, in which said turnpike or other public road shall be located; and where the same shall be located in two or more municipalities, the assets and property shall become vested in, and all said debts, liabilities, and obligations shall attach to, and be apportioned among, the said municipalities, in the same proportionate parts as the length of the turnpike or other public road within each municipality, as found by the court in its decree, shall bear to the whole length of such turnpike or other public road; and the said debts, liabilities, and obligations, as thus apportioned and adjusted, shall be enforceable against said municipalities to the same extent as though the same as apportioned had been incurred or contracted by said municipalities, and it shall be lawful for said

municipalities to incur indebtedness or to issue bonds, in the manner authorized by law, for the payment of the said debts, liabilities, and obligations.[89]

674b. Jurisdiction of Court to Extend to Cases Pending Under Act of June 1, 1907, P. L. 375.—Procedure in Such Cases.

The jurisdiction and authority conferred by this act upon the several courts of common pleas, or a judge thereof in vacation, to make and enforce the decrees herein authorized to be made and enforced, shall extend to all cases and proceedings taken and instituted under and in pursuance of the act of Assembly, approved the first day of June, one thousand nine hundred and seven (Pamphlet Laws, three hundred and seventy-five), which act is more particularly referred to in section four of this act, or under or in pursuance of any other law, which actions or proceedings shall be pending at the time of the passage of this act, including all such actions and proceedings in which any decree other than a final decree dissolving such corporation or commission shall appear of record at the time of the passage of this act; but nothing in this act contained shall be held or construed to annul, revoke, or set aside any finding of fact, which shall appear of record in any such case; and the several courts of common pleas, before which any such case or proceeding shall be pending, or in which any decree other than a final decree dissolving such corporation or commission shall appear of record at the time of the passage of this act, on application by petition, by any of the parties in interest who are parties to the record, setting forth in full such facts as may be necessary to inform the court of the status of such case or proceeding, and such additional facts to those set forth in the petition filed in such case as may be required under this act, are hereby authorized and empowered, after notice to all parties in interest, and after such examination of the truth of the matters alleged in such petition as the court may deem requisite, to alter, change, amend, revoke, or annul, as the case may require, any decree, other than a final decree dissolving such corporation or commission, which shall appear of record in any such case or proceeding at the time of the passage of this act, and to make the decree authorized under the several provisions of this act; and thereupon the assets of such corporation or commission shall become vested in, and the liabilities shall be apportioned

(89) Sec. 2, Act of May 3, 1909, P. L. 378.

to and among, and become the liabilities of, the several municipalities in which such turnpike or other public road shall be located, in the manner provided for in section two of this act.[90]

674c. Repeal of Act of June 1, 1907, P. L. 375.

The act of Assembly, entitled "An act authorizing courts of common pleas to decree the dissolution of corporations and commissions, not for profit, incorporated for the purpose of repairing, maintaining, and operating turnpike and other public roads, with the right to collect toll thereon, and levy tax for the maintenance of such roads and the payment of the interest and principal of indebtedness created, and to determine the manner in which the affairs of such corporations and commissions may be wound up," approved the first day of June, one thousand nine hundred and seven (Pamphlet Laws, three hundred and seventy-five), and all laws or parts of laws, general and special, inconsistent herewith, be and the same are hereby repealed.[91]

687. Distribution of the Assets of Dissolved Corporations.

A delay of fifteen years in making demand for a pro rata distribution of the assets of a corporation upon its dissolution, will bar recovery against the estate of the deceased treasurer of such corporation, who paid the amount claimed to the person appearing upon the books as a stockholder, taking from him a refunding bond without requiring the production of the stock certificate.[92]

701. Foreign Corporations Doing Business in Pennsylvania Required to Have Local Office.

The Act of June 8, 1911, P. L. 710, given in the following sections, revolutionizes the method of making service on foreign corporations, except on insurance companies, which has obtained in Pennsylvania since the passage of the Act of June 22, 1874, P. L. 108, which act is repealed by said Act of June 8, 1911.

The purpose of said Act of June 8, 1911, was to do away with the requirement that foreign corporations should have a registered agent in every place in which they did business in the state, and to provide one registered agent upon whom the Secretary of the Commonwealth could always make service as long as a claim

(90) Sec. 3, Act of May 3, 1909, P. L. 378.
(91) Sec. 4, Act of May 3, 1909, P. L. 378.
(92) Howell's Estate, 17 D. R., 410 (1908).

existed in favor of citizens of Pennsylvania against the foreign corporation registering the same.

Under the Act of April 22, 1874, as construed by the courts, a foreign corporation could register any one as its agent, enter into a contract, terminate its business in the state, the resident agent move away and leave the citizens of Pennsylvania without remedy.

Section 5 of Article XVI of the Constitution, which requires that no foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same upon whom process may be served, remains, of course, unaffected by the repeal of the Act of 1874, but, inasmuch as, since said repeal, there is no law requiring the registration of such agents, it might be necessary in the case of each service of process to affirmatively show that the person served was in fact the agent of the corporation.

Such being the case, it would seem that the safer way will be to make service in all cases upon the Secretary of the Commonwealth, as the agent and attorney of the corporation, the penalty provided in Section 4 of the act being probably sufficient to prevent any foreign corporation from failing to appoint the Secretary of the Commonwealth its attorney and agent under the act.

701a. Definition of "Foreign Corporation."

The term "foreign corporation," as used in this act, shall mean every corporation which has been established, organized, or chartered under laws other than those of the Commonwealth.[92*]

701b. Foreign Corporations to Appoint the Secretary of the Commonwealth Attorney for Service of Process.

Every such foreign corporation, before doing any business in this Commonwealth, shall appoint, in writing, the Secretary of the Commonwealth and his successor in office to be its true and lawful attorney and authorized agent, upon whom all lawful processes in any action or proceeding against it may be served; and service of process on the Secretary of the Commonwealth shall be of the same legal force and validity as if served on it; and the authority for such service of process shall continue in force so long as any liability remains outstanding against it in the Commonwealth. The power of attorney shall be executed with the seal of the corporation, and signed by the president and sec-

(92*) Sec. 1, Act of June 8, 1911, P. L. 710.

retary thereof; and shall contain a statement showing the title and purpose of said corporation, the location of its principal place of business in the Commonwealth, and the postoffice address within the Commonwealth to which the Secretary of the Commonwealth shall send by mail any process against it served on him; which address said corporation may change, from time to time, as it may find occasion, by filing a certificate, under its corporate seal, with the Secretary of the Commonwealth, setting forth such change of address. Upon the payment of a fee of ten dollars, for the use of the Commonwealth, the said power of attorney and statement shall be filed in the office of the Secretary of the Commonwealth, and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by the sheriff of Dauphin county, by leaving two copies of the process and a fee of two dollars in the hands, or at the office, of the Secretary of the Commonwealth; and he shall make due return of his service of said process to the court, magistrate, or justice of the peace issuing the same. Such process may be issued by any court or magistrate or justice of the peace having jurisdiction of the subject-matter in controversy, in any county of the Commonwealth in which said corporation shall have its principal place of business, or in such county in which the right of action arose. Upon the filing of the said power of attorney with the Secretary of the Commonwealth, it shall be his duty to certify forthwith to the Auditor General the corporate name of the corporation filing the same, and the location of its principal place of business in the Commonwealth, as set forth in said power of attorney.[92**]

701c. Secretary of Commonwealth to Serve Process.

When legal process against any such corporation has been served upon the Secretary of the Commonwealth, he shall immediately send by mail, postage prepaid, one copy of such process, directed to the corporation at the postoffice address designated by it as hereinbefore provided. The fee of two dollars paid by the plaintiff to the Secretary of the Commonwealth, at the time of the service, shall be taxed in his costs if he prevails in the suit. The Secretary of the Commonwealth shall keep a record of the day and hour of the service of such process on him, and a certified copy of such record shall be sufficient evidence thereof.[92***]

(92**) Sec. 2, Act of June 8, 1911, P. L. 710.
(92***) Sec. 3, Act of June 8, 1911, P. L. 710.

701d. Penalty for Failure to Comply With Act—Corporations not Complying not to Have Rights of Action.

Any person or persons, agent, officer, or employee of any such foreign corporation, who shall transact any business within this Commonwealth, for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding thirty days, and by a fine not exceeding one thousand dollars, or either, at the discretion of the court trying the same: *Provided,* That the failure of any such corporation to file the power of attorney and statement aforesaid, with the Secretary of the Commonwealth, shall not impair or affect the validity of any contract with such corporation, and actions or proceedings at law or in equity may be instituted and maintained on any such contract; but no such action shall be instituted or recovery had by any such corporation, on any such contract, either expressed or implied, in any of the courts of this Commonwealth, or before any justice of the peace or magistrate thereof, until such corporation complies with the provisions of this act: *And provided further,* Before any such corporation can institute any action in any of the courts of this Commonwealth, or before any justice of the peace or magistrate thereof, on any cause of action arising prior to the filing of the power of attorney and statement provided for in section two of this act, it shall pay to the Secretary of the Commonwealth, for the use of the Commonwealth, a license fee or fine of two hundred and fifty dollars ($250.00): *Provided further, however,* That this act shall not extend or be construed to give validity to any contracts, other than contracts between depositors and persons or corporations engaged in the business of receiving deposits of money subject to check, entered into by corporations prior to the passage of this act, nor to give to foreign corporations any right to enforce such contracts, other than contracts between depositors and persons or corporations engaged in the business of receiving deposits of money subject to check, if such right did not exist at the time such contracts were entered into; but actions or proceedings at law or in equity may be instituted and maintained, and recovery may be had in any pending action, on contracts between depositors and persons or corporations engaged in the business of receiving deposits of money subject to check, al-

though said contracts may have been entered into prior to the passage of this act.[93]

701e. Repeal of Act of April 22, 1874, P. L. 108—Act not to Apply to Foreign Insurance Companies.

The act, entitled "An act to prohibit foreign corporations from doing business in Pennsylvania, without having known places of business and authorized agents," approved the twenty-second day of April, one thousand eight hundred and seventy-four (Pamphlet Laws, one hundred and eight), be and the same is hereby repealed, and all other acts of Assembly, inconsistent with the provisions hereof or supplied hereby, are also hereby repealed: *Provided, however,* That the license fee or fine of two hundred and fifty dollars ($250.00), prescribed in the fourth section of this act, shall not be required of or imposed upon any foreign corporations now duly registered under said act, approved the twenty-second day of April, one thousand eight hundred and seventy-four, hereby repealed, if such foreign corporation shall file the power of attorney and statement, provided for in section two of this act, in the office of the Secretary of the Commonwealth, within one year after the date of the approval hereof; nor shall the repeal of said act be construed as in any wise affecting the existing rights or liabilities of any foreign corporation now duly registered thereunder: *And provided further,* That this act shall not be construed to apply to foreign insurance companies, but the doing of business in this Commonwealth by such companies shall be regulated by existing laws.[93*]

702. Status of Foreign Corporations Doing Business in Pennsylvania Which Have not Complied With the Requirements of the Act of April 22, 1874.

A foreign corporation may maintain an action of replevin in Pennsylvania to demand personal property which has been taken from it by one who has had no contractual relation with the company although such corporation is not registered under the Act of April 22, 1874.[93**]

While the court will not aid unregistered foreign corporations to enforce contracts, they will assist them to obtain possession of their property, and hence an unregistered foreign corporation

(93) Sec. 4, Act of June 8, 1911, P. I. 710.
(93*) Sec. 5, Act of June 8, 1911, P. L. 710.
(93**) U. S. Circle Swing Co. *v.* Reynolds, 224 Pa., 577 (1909).

may maintain replevin for property seized by a constable for rent while in the possession of a commission merchant, to whom it had been consigned.[94]

In an action by a vendor against a vendee for the price of goods sold, an averment in the affidavit of defense that the plaintiff is an unregistered foreign corporation is insufficient to prevent judgment, unless there is a further averment that the matter involved is an intra-state transaction, or that the corporation was doing business within the state in the particular transaction contrary to the act of Assembly.[95]

A foreign corporation whose charter designates its business office as located in Pennsylvania, whose officers and directors permanently reside therein, and whose meetings, except its annual meetings, are held in said state, is within the jurisdiction of the local courts, although it has not filed a registry in compliance with the provisions of the Act of 1874, and the service of a bill in equity upon its president to compel the registry of a transfer of its stock, and the issuance of a new certificate to the assignee, will be sustained. Such a controversy does not involve the question of internal management, but concerns merely the relations of the corporation to a third party.[96]

The incorporators or members of unregistered foreign corporations are not liable as partners, for the debts of their corporations.[97]

In a suit by a foreign corporation to recover damages incurred by the plaintiff through the failure of the defendant to accept a car-load of flour, an affidavit of defense which alleges that the plaintiff is a foreign corporation engaged in doing business within the state, that the contract involved in the suit was made in the state, and that the plaintiff may not recover because of failure to register under the Act of April 22, 1874, is sufficient.[98]

In an action in which the plaintiff is a foreign corporation, an affidavit of defense is insufficient which avers merely that the plaintiff is a foreign corporation doing business illegally in Penn-

(94) Berryhill Mineral Springs Co. *v.* Pile, 17 D. R., 246 (1907); 35 Pa. C. C., 354; National Cash Register Co. *v.* Shurber, 41 Pa. Super. Ct., 187 (1909).

(95) Independent Brick Co. *v.* Biddle, 17 D. R., 1083 (1908).

(96) Pitts. *v.* Pittsburgh Metals, Mining and Milling Co., 17 D. R., 821 (1908).

(97) Stephenson *v.* Dodson, 36 Pa. Super. Ct., 343 (1908); Stoner *v.* Philllipi, 41 Pa. Super. Ct., 118 (1909).

(98) Quirk Milling Co. *v.* Grausam, 15 Luz., 218 (1910).

sylvania, without setting out when or how the plaintiff is doing business, nor that the transaction involved in the suit was any part of the business transacted by the plaintiff company in Pennsylvania.[99]

A foreign corporation which has not registered under the Act of April 22, 1874, may institute an action in replevin against one who has no contractual relation with it.[100]

A foreign corporation which, without maintaining an office in Pennsylvania or transferring any part of its capital thereto, or prosecuting its ordinary business therein, receives orders for goods and delivers the same in that state, may maintain an action of replevin without having previously registered under the Act of April 22, 1874.[1]

It seems that a foreign corporation doing business in the United States, whether doing business in Pennsylvania or not, may file for record a trade mark under the Act of June 20, 1901, P. L. 582, although it may not have registered under the provisions of the Act of April 22, 1874.[2]

703. What Constitutes the Doing of Business in Pennsylvania Within the Meaning of the Act of April 22, 1874.

Where a number of persons enter into a contract in writing with a foreign corporation not registered in Pennsylvania, by which they agree to organize a Pennsylvania corporation, subscribe to the stock thereof, and pay, out of the money subscribed for, a plant to be erected by said foreign corporation for the new company, and, in pursuance of said agreement, the proposed corporation is organized, a large part of the subscription paid, the plant erected and the foreign corporation paid in full, certain subscribers who have not paid the amount of their subscriptions may not, in an action against them by the Pennsylvania company, set up that the whole contract is invalid because made with an unregistered foreign corporation.[3]

(99) Arms Pocket-Book & Leather Novelty Co. *v.* Posey, 40 Pa. Super. Ct., 361 (1909).

(100) National Cash Register Co. *v.* Shurber, 41 Pa. Super. Ct. 187 (1909).

(1) Hall's Safe Company *v.* Walenk, 42 Pa. Super. Ct., 576 (1910).

(2) Wadsworth, Howland & Company, 19 D. R., 366 (1909); op. Atty. Gen.; 37 Pa. C. C., 77.

(3) Altoona Sanitary Milk Co. *v.* Armstrong, 38 Pa. Super. Ct., 350 (1909).

A foreign corporation incorporated for the purpose of buying and selling real estate does business within the meaning of the Act of April 22, 1874, when it makes a single sale of Pennsylvania real estate in that state, and the officers of such corporation failing to register are guilty of a misdemeanor.[4]

A foreign corporation took orders for lumber by its agent in Pennsylvania, transmitting them to its place of business in the state of New York, where, if approved by the secretary of the company, the orders were filled and the lumber shipped thence to the purchasers. It maintained an office, at the time certain sales were made, in Lancaster, Pennsylvania, through which orders were sent to its place of business in New York, whence, upon the approval of the orders there, lumber was shipped into Pennsylvania. Remittances for such orders were made to this office, which was called the correspondent's office, and was used by the president and treasurer, whose home was in Lancaster, in his capacity of sales agent, and orders which were taken by others than by the president and treasurer, which went directly to an office at North Tonawanda, were approved by him at Lancaster or wheresoever he happened to be found. In connection with its Lancaster office, the company had a bank account with a Lancaster bank. Held, that the company in transacting such business did not come within the prohibition of the Act of 1874, and further that the taking of several orders for certain lumber not of the kind dealt in by the foreign corporation, which were filled by shipping such lumber directly to the purchaser from within the state, did not constitute the doing of business within the state, such transaction being merely incidental to the interstate business in which the company was engaged.[5]

Isolated transactions, commercial or otherwise, taking place between a foreign corporation domiciled in one state and a citizen of another state do not constitute the doing or carrying on of business by the foreign corporation within the latter state. Where the officers of a foreign corporation contracted in Pennsylvania for the purchase of a machine to be manufactured and the corporation is registered under the Act of April 22, 1874, a few days after the contract was made and long before the completion and delivery of the machine, the officers making the contract cannot

(4) Com. *v.* Nolde, 44 Pa. Super. Ct., 111 (1909); 1 Berks, 26 (1908).

(5) Spider Lake Saw Mill & Lumber Company *v.* Geisel's Executor, 36 Pa. C. C., 625 (1909); 19 D. R., 959; 12 Dau. Co. R., 248.

be held individually liable for the price of the machine, where it appears that the company had done no other business in Pennsylvania, and that the manufacturers knew that the parties with whom they were dealing represented the corporation.[6]

704. The Burden of Proof is on the Foreign Corporation to Show Compliance with the Provisions of the Act of April 22, 1874.

But where a foreign corporation bringing an action of assumpsit within the Commonwealth, avers in its statement of claim that it is a foreign corporation, and has duly registered in Pennsylvania, which averment is not denied in the affidavit of defense, the corporation is not bound to affirmatively prove its registration at the trial,[7] but where such a corporation sets up its non-registration as a defense, and neither registration nor non-registration is shown, the court will not assume the fact of non-registration.[8]

705. Foreign Corporations Must Register All of Their Agents in the State.

Where a foreign corporation duly registers an office and an agent under the provisions of the Act of April 22, 1874, and thereafter performs a municipal contract for paving in a county other than that in which the designated office is located, the fact that the company did not register an office in the county where there work was done, and an agent for the transaction of its business therein, is not a bar to recovery by scire facias upon a municipal claim for an assessment against a land owner's property, the claim having been filed, and the scire facias issued, in the name of the city for the use of the contracting corporation. In such a case the rights of the legal plaintiff alone may be regarded and must prevail.[9]

709. Registered Agents Continue Such Until Their Appointments are Cancelled.

Where the registered agent of a foreign corporation is a stockholder of the company and also its secretary and treasurer, the fact that he has parted with his interest and resigned his offices

(6) Stoner *v.* Phillipi, 41 Pa. Super. Ct., 118 (1909).

(7) Keystone Wrapping Machine Co. *v.* Bromeier, 42 Pa. Super. Ct., 384 (1910).

(8) McGibeny *v.* Berks-Nassau Realty Company, 1 Berks, 177 (1909); 23 York, 9.

(9) Allentown *v.* Ackerman, 37 Pa. Super. Ct., 363 (1908).

does not end his agency, but he still remains the agent of the company for the service of process.[10]

The Act of April 22, 1874, P. L. 108, places no restriction upon the power of appointment, removal or substitution of registered agents of foreign corporations. Service of process may not be made upon a former registered agent of a foreign corporation who has resigned, nor after a certificate of revocation of his appointment by the company has been filed in the office of the Secretary of the Commonwealth and the company has ceased to do business in Pennsylvania.[11]

710. Foreign Corporations May Remove Suits to Federal Courts.

A foreign corporation doing business in Pennsylvania in pursuance of the laws of that state, is not precluded from removing a case to the Federal courts; and, where the petition for the removal and the bond are sufficient, a state court will not consider whether such corporation, by filing its agreement in court not to remove any suits brought against it on its bond to a Federal court, has waived its right of removal.[12]

An action brought in the name of the Commonwealth for the use of a county, at the suggestion of a school district, the actual plaintiff, against a foreign corporation doing business in the state, may be removed to a Federal court upon the petition of such foreign corporation.[13]

712. Foreign Corporations Forbidden to Hold Real Estate.

The incapacity of a foreign corporation to hold real estate may be attacked only by the Commonwealth, and not by private citizens. Such incapacity does not grant immunity to wrongdoers against such foreign corporation.[14]

714. Foreign Iron, Steel, Glass and Quarrying Companies and Corporations Formed for Bottling Spring Waters, the Manufacture of Ice and the Manufacture of Garden and Horticultural Implements and the Sale of Seeds, Bulbs, etc., May Hold Real Estate.

It shall and may be lawful for any company incorporated under the laws of any other state for the manufacture of any

(10) Germantown Dairy Co. *v.* McCallum, 223 Pa., 554 (1909).

(11) Nat. Bank of Smyrna v. R. G. Chase Company, 17 D. R., 869 (1908).

(12) Com. *v.* U. S. Fidelity & Guaranty Co., 18 D. R., 656 (1908).

(13) Com. *v.* U. S. Fidelity & Guaranty Co., 18 D. R., 656 (1909).

(14) Excelsior Company *v.* Sun Company, 11 Del., 294 (1910).

form of iron, steel, or glass, or for the quarrying of slate, granite, stone, or rocks of any kind, or for dressing, polishing, or manufacturing the same, or any of them, or for any mineral springs company incorporated for the purpose of bottling and selling natural and mineral spring water, or for any company incorporated for the purpose of manufacturing, supplying and sale of ice, or manufacturing and selling garden and horticultural implements, and dealing in seeds, plants, bulbs, and flowers, to erect and maintain buildings and manufacturing establishments within this Commonwealth, and to take, have and hold real estate to an amount necessary and proper for corporate purposes: *Provided,* That nothing herein contained shall be deemed to prevent or relieve real estate, taken and held by any such company under the provisions of this statute, from being taxed in like manner with other real estate within this Commonwealth: *And provided further,* That no foreign corporation shall be entitled to employ any greater amount of capital in any such business in this state than the same kind of corporations organized under the laws of this state are entitled to employ: *And provided further,* That every such foreign corporation, doing business as aforesaid in this Commonwealth, shall be liable to taxation to an amount not exceeding that imposed on corporations organized for similar purposes under the laws of this state, and every such foreign corporation taking the benefit of this act shall make the same returns to the Auditor General that are now required by law of the corporations of this state.[15]

It shall and may be lawful for any company incorporated under the laws of any other state, for the manufacture of any form of iron, steel, or glass, or for the quarrying of slate, granite, cement rock, stone, or rocks of any kind, or for dressing, polishing, or manufacturing the same, or any of them, or for any mineral springs company incorporated for the purpose of bottling and selling natural mineral springs water, or for any company incorporated for the purpose of manufacturing, supplying, and sale of ice, or for the manufacture and sale of chemicals, or for the manufacture and sale of foodstuffs and eatables, cement and cement products, and the quarrying of cement rock, or for the manufacture, buying, selling, leasing, using, and operation of electrical apparatus and machinery, and articles of every kind appertaining to or in any wise connected with the production, use

(15) Act of April 20, 1911, P. L. 68.

regulation, control, distribution, or application of electricity or electrical energy or products, for any use or purpose; constructing, acquiring, using, selling, buying, or leasing any works, construction, or plant, or part thereof, connected with or involving such use, distribution, regulation, control, or application of electricity, or the control or use of electrical apparatus for any purpose, and of producing, furnishing, and supplying electricity or electrical apparatus in any form and for any purpose, and to carry on a general manufacturing business, to erect and maintain buildings and manufacturing establishments within this Commonwealth, and to have and hold real estate to an amount necessary and proper therefor: *Provided,* That nothing herein contained shall be deemed to prevent or relieve real estate, taken and held by such company under the provisions of this statute, from being taxed in like manner with other real estate within this Commonwealth: *And provided further,* That no foreign corporation shall be entitled to employ any greater amount of capital, in any such business in this state, than the same kind of corporations organized under the laws of this state are entitled to employ: *And provided further,* That every such foreign corporation, doing business as aforesaid in this Commonwealth, shall be liable to taxation to an amount not exceeding that imposed on corporations organized for similar purposes under the laws of this state, and every such foreign corporation taking the benefit of this act shall make the same returns to the Auditor General that are now required by law of the corporations of this state.

The first of the preceding acts purports to amend the Act of April 19, 1901, P. L. 86, which in turn amended the Act of June 16, 1893, P. L. 466, which was amendatory of the Act of June 9, 1881, P. L. 89.

The Act of 1901, provided that foreign corporations of the following classes might hold real estate in Pennsylvania:

Companies for the manufacture of iron, steel or glass, or for the quarrying of slate, granite, stone or rocks of any kind, or for the bottling of mineral spring water, or for the purpose of manufacturing ice.

Said Act of 1901 was in turn amended by the Act of May 28. 1907, P. L. 266, which added to the classes of foreign companies which might hold real estate, companies for the quarrying of cement rock, or for the manufacture of chemicals, or for the

(16) Act of June 23, 1911, P. L. 1115.

manufacture of foodstuffs and eatables, cement and cement products.

The Act of April 27, 1909, P. L. 173, amended the Act of April 19, 1901, directly, and without any reference to the amendment to said Act of May 28, 1907, P. L. 266, and the said Act of 1909 omits from the classes of foreign corporations which may hold real estate, all the new classes enumerated in the Act of 1907, but adds to the classes which may hold real estate enumerated in the Act of 1901, companies for the manufacture of paper, wood-pulp and chemical fibre.

The foregoing Act of April 20, 1911, P. L. 68, again amends the Act of April 19, 1901, directly, and without reference to either of the acts amendatory thereof of May 28, 1907, P. L. 266, or April 27, 1909, P. L. 173, and consequently omits the classes of foreign corporations permitted to hold real estate covered by said Acts of 1907 and 1909, and not covered by the Act of 1901, but adds to such classes companies for the manufacture of garden and horticultural implements and the dealing in seeds, plants, bulbs and flowers.

Coming now to the consideration of the immediately preceding Act of June 23, 1911, P. L. 1115, it appears that the draughtsman of the act was aware that there was a prior amendment of 1907, and he accordingly amends the act approved in that year by providing that foreign corporations incorporated for "the manufacture and sale of electrical apparatus," etc., may hold real estate in Pennsylvania.

But this act overlooks the Act of April 27, 1909, P. L. 173, which provided that foreign corporations incorporated for the manufacture of paper, wood pulp and chemical fibre might hold real estate in Pennsylvania, and also overlooks the immediately preceding Act of April 20, 1911, P. L. 68, permitting foreign companies engaged in "the manufacture and sale of garden and horticultural implements," etc., to hold real estate within the Commonwealth.

These acts constitute a series of legislative blunders which it is difficult to contemplate with patience.

721. When Foreign Corporations not Having the Right to Hold Real Estate in Pennsylvania May Convey and Make Title to Such Real Estate Heretofore Acquired by Them.

Whenever any corporation incorporated and existing under the laws of any other state of the United States, doing business in

this state and having therein one or more known places of business and an authorized agent or agents upon whom process may be served, and not having the right to own or hold real estate in this Commonwealth, has heretofore acquired and is now holding the title to any real estate in this Commonwealth, such corporation is hereby authorized and empowered to make conveyance of such real estate to any citizen of the United States, or to any corporation chartered under the laws of this Commonwealth and authorized to hold real estate, and such citizen or corporation, grantee as aforesaid, shall hold and may convey such title and estate in fee to any purchaser thereof, and such title shall be indefeasible against the Commonwealth or any person or corporation claiming the same.[17]

722. Grantees of Real Estate of Foreign Corporations Before Inquisition May Hold and Convey the Same Indefeasibly.

Where any conveyances of real estate, in this Commonwealth, have been made by any foreign corporation or corporations not having the right to own and hold the same, to any citizen of the United States, or to any corporation chartered under the laws of this Commonwealth and authorized to hold real estate, such citizen or corporation, grantee as aforesaid, shall hold and may convey such title and estate indefeasibly, as to any right of escheat in this Commonwealth by reason of such real estate having been held by a corporation not authorized to hold the same by the laws of this Commonwealth.[18]

Where any real estate in this Commonwealth, heretofore held by or for any corporation or corporations not having the right to own and hold the same, has been conveyed to any citizen of the United States or to any corporation authorized by the laws of this Commonwealth to hold the same, such citizen or corporation, grantee as aforesaid, shall hold and may convey such title and estate indefeasibly as to any right of escheat in this Commonwealth, by reason of such real estate having been held by or for a corporation not authorized to hold the same by the laws of this Commonwealth.[19]

(17) Sec. 1, Act of June 23, 1911, P. L. 1114.
(18) Act of March 7, 1911, P. L. 13; Act of April 23, 1909, P. L. 172.
(19) Act of June 15, 1911, P. L. 955.

724. Validation of Contracts Made by Foreign Corporations Before Registering in Pennsylvania.

Where a foreign corporation not registered in Pennsylvania brings suit in that state and judgment is entered against it on the sole ground of its having failed to register, and thereafter and prior to the passage of the Act of May 23, 1907, P. L. 205, it registers, and then institutes another suit against the same defendant for the same cause of action, the second action is not barred by the prior judgment.[20]

The Act of May 23, 1907, which gives foreign corporations who have failed to register prior to the making of a contract the right to recover upon it under certain circumstances, is constitutional. It does no more than remove the bar imposed by the legislature and does not impair the obligation of the contract or divest private property without due process of law.[21]

734. Stockholders in Foreign Corporations.

Where a testator leaves shares of stock in a foreign corporation to his executors in trust for the purpose declared in his will, and a decree is entered awarding the stock in question to them, a decree of court of the state of the corporation's domicile, subsequently entered, levying an assessment against testator's executors, is no ground for an entry of judgment in Pennsylvania against the trustees. As long as the stock stands in the hands of the trustees it is discharged of liability for indebtedness of the testator's estate, and a decree awarding the stock to the trustees may not be impeached collaterally. It is immaterial in such case that the trustees and the executors of the will are the same persons.[22]

A defendant in a foreign judgment recovered in a proceeding to collect an assessment on the stock of a foreign corporation, who was served only by publication, may not be sued on such judgment in Pennsylvania, where it appears that the foreign statute relative to service by publication does not authorize such service in proceedings to enforce the liability of stockholders to creditors, and the terms of such statute negative the implication

(20) Pittsburgh Construction Company *v.* West Side Belt Railroad Company, 227 Pa., 90 (1910).

(21) Pittsburgh Construction Co. *v.* West Side Belt R. R. Co., et al.; W. D., Oct. Term, 1911, No. 34 (C. P. No. 4, Allegheny Co., Second Term, 1910, No. 595); affirmed. Unreported. Op. filed July 6, 1911.

(22) Samuel Hano Company *v.* Hano, 224 Pa., 212 (1909).

of the consent of stockholders to such service because of their membership in a corporation.[23]

Where a foreign corporation sues in Pennsylvania on a stock subscription, and the subscription paper shows upon its face that the agreement was to sell the stock for less than its par value, it is incumbent upon the plaintiff to show affirmatively that the laws of the state in which the plaintiff was organized permit sales of stock on such terms, and in the absence of such proof the court will assume that the foreign law is the same as that of Pennsylvania, and that the contract is an illegal one.[24]

735. Foreign Attachment.

A writ of foreign attachment, in the form aforesaid, may be issued against the real or personal estate of: (a.) any person not residing within this Commonwealth, and not being within the county in which such writ shall issue at the time of the issuing thereof, or (b.) of any corporation incorporated under the laws of any other state or nation, in all actions ex contractu, and in actions ex delicto for a tort committed within this Commonwealth.[24*]

A debt due by a foreign corporation registered in Pennsylvania to another foreign corporation may be attached in said state by a foreign attachment.[25]

737. The Courts of Pennsylvania Will not Interfere with the Internal Management of Foreign Corporations.[26]

A bill by a stockholder on behalf of himself and others against a foreign corporation, alleging fraud and mismanagement by the directors in the conduct of the business of the company and certain allied foreign corporations, and praying for an account and restitution of the loss sustained, is bad on demurrer, because requiring the court to interfere in the internal management of such foreign corporation.[27]

(23) McNutt *v.* Bakewell, 223 Pa., 364 (1908).

(24) Keystone Wrapping Machine Co. *v.* Bromeier, 42 Pa. Super. Ct., 384 (1910).

(24*) Act of June 21, 1911, P. L. 1097.

(25) Wiener *v.* American Insurance Company of Boston, 224 Pa., 292 (1909); 39 Pa. Super. Ct., 219 (1909).

(26) See Sec. 702.

(27) Happersett *v.* Eaton, 19 D. R., 640 (1910).

A court of Pennsylvania will not entertain a petition by a stockholder against a foreign corporation for a mandamus in order to obtain a list of stockholders for the purpose of the formation of a club to protect their interests.[28]

The courts of Pennsylvania will not take jurisdiction of matters in dispute between the stockholders of a foreign corporation, although the physical property of such corporation is situated within the state.[29]

748. Exemption from Local Taxation of Public Service Corporations.

The third section of the Act of June 4, 1859, P. L. 828, providing that all real estate in the city of Pittsburgh owned or possessed by any railroad company shall be subject to taxation for city purposes the same as other real estate, does not subject to local taxation the ground comprised within the rights of way of railroads.[30]

A corporation formed for the purpose of maintaining a filter plant for the filtration of water for a municipality is not such a quasi-public corporation as to exempt its plant, in connection with the land upon which it is erected, from local taxation.[31]

749. What Property is and What is not Essential to the Exercise of the Franchises of Public Service Corporations.

The roadbed of a railroad is not "real estate" within the meaning of the Act of June 4, 1901, P. L. 364, and is not subject to assessment for local taxation.[32]

The roadbed of a public railroad is not real estate within the meaning of the Act of June 4, 1901, P. L. 364, and is not subject to assessment for local taxation or municipal claims.[33]

751. Local Taxation of Street Railway Companies in Philadelphia and Pittsburgh.

The consolidated city of Pittsburgh has no power to levy a tax upon real estate situated in the former city of Allegheny, be-

(28) Commonwealth *v.* The Mexican Plantation Company, 19 D. R., 861 (1910).

(29) Minnick *v.* Hollopeter, 15 Luz., 9 (1909).

(30) Pennsylvania R. R. Co. *v.* Pittsburgh, 221 Pa., 90 (1908).

(31) East Lampeter Township *v.* Maignen Filter Plant, 19 D. R., 479 (1909).

(32) Philadelphia *v.* Phila. & Read. R. R. Co., 38 Pa. Super. Ct., 529.

(33) Philadelphia *v.* Fairhill R. R. Co., 41 Pa. Super. Ct., 245 (1909).

longing to railroad companies, for the purpose of paying the debt of said city of Allegheny existing prior to the consolidation, where such real estate is essential to the exercise of the franchises of said railroad company, and the city of Allegheny had never taxed it and had no power to tax it prior to the consolidation.[34]

There is nothing in the Act of January 4, 1859, P. L. 828, the Act of February 7, 1906, P. L. 7, nor any other act, which authorizes the consolidated city of Pittsburgh to tax the real estate of a street railway company situated in the limits of the former city of Allegheny, which is necessary and essential for the exercise of the franchises of the company.[35]

752. Municipal Impositions on Street Railway Companies.

A borough may impose a reasonable license tax on street cars under the police power, although there be no allusion in the ordinance imposing the same to police inspection and regulation, and the burden of proving the reasonableness of such an ordinance is not upon the borough but upon the company owning the cars.[36]

Such a license tax includes more than a mere periodical inspection of the cars and is a specific charge to meet the entire expense of the regulation, inspection and supervision of the company by the municipality.[37]

753. Local Taxation of Water Companies.

Corporations chartered "for the purpose of supplying water and water power to the public and to firms, individuals and corporations" are quasi-public corporations and exempt from local taxation on lands and appurtenances essential to the exercise of their franchises.[38]

A borough may under its police powers impose a reasonable mileage license tax on the pipes and mains of a water company, and where it does so, the burden is on the company alleging the

(34) Pennsylvania Co. *v.* Pittsburgh, 226 Pa., 322 (1910).

(35) Federal Street & Pleasant Valley Pass. Ry. Co. *v.* Pittsburgh, 226 Pa., 419 (1910).

(36) Gettysburg Borough *v.* Gettysburg Transit Co., 36 Pa. Super. Ct., 598 (1908).

(37) Gettysburg Borough *v.* Gettysburg Transit Co., 36 Pa. Super. Ct., 598 (1908).

(38) Conoy Township Supervisors *v.* York Haven Electric Power Plant Co., 222 Pa., 319 (1908).

invalidity of the tax because of its unreasonableness to aver and prove the facts that make it so.[39]

Corporations formed for the purpose of the storage and transportation of water and water power for commercial and manufacturing purposes, under Clause 9, Section 2 of the Act of April 29, 1874, are quasi-public corporations, and so much of their real estate as is necessary for the exercise of their corporate franchises is not subject to local taxation.[40]

755. Local Taxation of Natural Gas Companies.

A borough may require the payment of a reasonable license fee of so much per mile on the pipes and mains of a natural gas company, under the police power, notwithstanding the fact that such pipes and mains are necessary to carry out the corporate purposes of the company and that the value of the same is included in its capital stock on which it pays a capital stock tax.[41]

764. Courts of Common Pleas to Decide Whether Pole and Wire Licenses are Reasonable.

The Act of April 17, 1905, P. L. 183, is not unconstitutional as special legislation because it does not include electric street railway companies within its provisions. Such railway companies are "street passenger railways," which railways are placed by the Constitution and the acts of Assembly in a separate class.[42]

770. Decisions as to Pole and Wire License Fees.

In determining the amount of pole and wire license fees properly chargeable under the Act of April 17, 1905, the court is controlled by the cost of inspection and regulation, and if there be no inspection or supervision by the municipality no license fee may be imposed. No flat charge per pole or per mile could be imposed throughout the Commonwealth because the cost of inspection is not the same in any two municipalities.[43]

(39) Kittanning Borough *v.* Armstrong Water Co., 35 Pa. Super. Ct., 174 (1908).

(40) Martic Township School District *v.* McCall Ferry Power Company, 19 D. R., 780 (1910).

(41) Kittanning Borough *v.* Garretts Run Gas Co., 35 Pa. Super Ct., 167 (1908).

(42) West Chester Borough *v.* Postal Teleg. Cable Co., 38 Pa. Super. Ct., 603 (1909).

(43) Delaware & Atlantic Teleph. & Teleg. Co.'s Petition, 224 Pa., 55 (1909).

A borough imposed a pole and wire license fee of one dollar per pole, two dollars and fifty cents per mile of wire and thirty dollars per mile of conduit, which was found reasonable by the court below. The Superior Court reduced the fee, finding that the amount paid by the company subject to the license was about three times the sum paid to the borough's single policeman during the year for inspection duty. It also appeared that the actual cost of necessary inspection and supervision was small. Held, that the amount of license fee as reduced by the Superior Court should be sustained, but that the proper rule as to the reasonableness of the license fee is the cost of the necessary inspection.[44]

Under the Act of April 17, 1905, P. L. 183, the court found that a license fee of ten cents per pole would compensate the borough of Hollidaysburg for the cost of inspection and regulation of poles and wires for prior years, and twenty cents per pole for the years 1907 and 1908.[45]

In the borough of Gaysport the license fee was fixed at twenty cents per pole for the year 1906, and at twenty-five cents per pole for the years 1907 and 1908.[46]

In the borough of Strasburg it was held that a fee of ten cents a pole was a reasonable one, the telegraph company in question having forty-five poles and a mile of wire in the borough.[47]

Where an individual is granted the privilege of constructing a telephone line on the streets of a borough on condition of his compliance with the terms of a general ordinance imposing an annual license fee of 50 cents on each pole, and the grantee accepts such privilege, he is bound to pay said license fee, and if he transfers the line to a corporation, the latter will be compelled to pay the license fee, although the grant to the original grantee was not to him, his successors, or assigns. In an action to recover such license fee, the corporation defendant may raise no question as to the reasonableness of the fee, and is not entitled to a hearing under the provisions of the Act of April 17, 1905, P. L. 183.[48]

(44) Delaware & Atlantic Teleph. & Teleg. Co.'s Petition, 224 Pa., 55 (1909).

(45) Postal Teleg. Cable Co. *v.* Hollidaysburg Borough, 17 D. R., 298 (1909).

(46) Penna. Teleph. Co. *v.* Gaysport Borough, 17 D. R., 300 (1907).

(47) Postal Teleg. Cable Company's Petition, 17 D. R., 1085 (1908).

(48) Cochranton Borough *v.* Cochranton Telephone Co., 41 Pa. Super. Ct., 146 (1909).

Where an order of court upon the petition of one telephone company fixed the license fee against it at ten cents per pole in a borough, which adjudication the borough considered applicable to the poles of all telephone companies, such borough may not within two years recover a larger sum from another company which, for that reason, did not present a separate petition, the fifth section of the Act of April 17, 1905, P. L. 183, providing that no application to alter a final order may be made oftener than once in every two years.[49]

The presumption is, that a pole and wire license fee imposed by ordinance is reasonable, and the burden is on a telegraph or telephone company to overcome the presumption by the fair weight of evidence.[50]

The Act of April 17, 1905, P. L. 183, is constitutional. Its title is sufficient. It does not violate the constitutional provision relative to trial by jury, nor does it delegate legislative power to the court.[51]

It is not unconstitutional as special legislation, because it does not include electric street railway companies within its provisions, such companies being street passenger railways, and having been placed by the constitution itself in a special class.[52]

The findings of fact by the court below under the Act of 1905, in a proceeding to determine the reasonableness of a license fee, when sustained by sufficient evidence, will not be reversed by the appellate court.[53-54]

An adjudication under the Act of April 17, 1905, is not conclusive of a similar proceeding between the same parties instituted several years afterwards. Changed conditions may render an ordinance which was reasonable at the time of its passage unreasonable and oppressive afterwards.[55]

(49) Gettysburg *v.* United Telephone Company, 19 D. R., 875 (1910).

(50) Union Telephone Company of Erie *v.* Greenville Borough, 36 Pa. C. C., 197 (1908); 18 D. R., 932.

(51) Pittsburgh & Allegheny Telephone Company *v.* Braddock Borough, 43 Pa. Super. Ct., 456 (1910).

(52) West Chester Borough *v.* Postal Telegraph-Cable Co., 227 Pa., 384 (1910).

(53-54) West Chester Borough *v.* Postal Telegraph Company, 227 Pa., 384 (1910); 38 Pa. Super. Ct., 603 (1909); Pittsburgh & Allegheny Telephone Company *v.* Braddock Borough, 43 Pa. Super. Ct., 456 (1910).

(55) Pittsburgh & Allegheny Telephone Company *v.* Braddock Borough, 43 Pa. Super. Ct., 456 (1910).

An ordinance fixing an annual license fee of fifty cents per pole on 503 poles, and $3.00 per mile (line measure) upon 12 and 7-10 miles of wire in the borough of Coudersport, was held to be not unreasonable nor excessive.[56]

771. Mercantile and Other License Taxes.

A corporation engaged in the business of a real estate broker must pay a license tax to the Commonwealth under the provisions of the Act of April 14, 1905, P. L. 161.[57]

A foreign corporation manufacturing automobiles entered into a contract with a Pennsylvania corporation doing business in that state, by which the foreign company agreed to sell automobiles to the Pennsylvania company at a certain list price, delivery to be made as soon after orders were received as practicable, payment to be made in cash. The Pennsylvania company agreed not to sell any other kind of automobiles within a designated territory. Payments were to be made either in advance, or by paying drafts with bills of lading attached. The contracts could be terminated upon ten days' notice. There was nothing in the agreement which authorized the Pennsylvania company to bind the foreign company by any engagement with a third party. Held: (1) That the agreement was a contract for the sale of automobiles, and did not create between the parties the relation of principal and agent; (2) that upon the payment of sight drafts the automobiles became the absolute exclusive property in Pennsylvania of the purchasing company; and (3) that the Pennsylvania company was a retail vendor of automobiles, and as such subject to the mercantile tax imposed by the Act of May 2, 1899, P. L. 184.[58]

A brewers' supply company which sells malt, hops, isinglass, bottles and corks to brewers, bottlers and wholesale liquor dealers, who use these articles in carrying on their business, is, as to such business, a wholesale vendor within the meaning of the Act of May 2, 1889, P. L. 184.[59]

Social clubs are not subject to the payment of a mercantile license tax on their receipts from sleeping rooms, billiard and

(56) Bell Telep. Co. *v.* Coudersport Borough, 20 D. R., 346 (1910); 38 Pa. C. C., 33.

(57) Com. *v.* Samuel Black Co., 223 Pa., 74 (1909).

(58) Com. *v.* Banker Bros., 38 Pa. Super. Ct., 101 (1909).

(59) Pittsburgh Brewers and Bottlers' Supply Company's Mercantile Tax, 38 Pa. Super. Ct., 121 (1909).

pool rooms, etc., maintained by them for the use of their members.[60]

774. Liability of Corporations to the Payment of the State Tax on Moneyed Capital.

The Act of May 11, 1911, P. L. 265, re-enacts Section 1 of the Act of June 8, 1891, P. L. 229, and adds thereto the following:

And provided further, That the provisions of this act shall not apply to fire companies, firemen's relief associations, secret and beneficial societies, labor unions and labor union relief associations, and all beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies, or unions: *Provided also,* That this section shall take effect on the first day of January, Anno Domini one thousand nine hundred and twelve.

Section 2. All acts or parts of acts inconsistent herewith, or that are supplied by this act, be and the same are hereby repealed; saving, reserving and excepting unto the Commonwealth the right to collect any tax, taxes, interest, penalty or penalties, due or owing or accrued under the said laws, or parts of laws, prior to the date when the several sections of this act go into effect.

This act overlooks the amendment to said section of the Act of May 1, 1909, P. L. 298, which provided as follows, all of which was new matter after the comma in the second line, and is not re-enacted in the Act of 1911.

"And provided, that the provisions of this act shall not apply to building and loan associations, or to savings institutions having no capital stock: *Provided,* That nothing herein contained shall be construed to relieve or exempt individual depositors in savings institutions having no capital stock from any taxation to which under existing laws such depositors may be subject: *And also provided,* That if at any time, either now or hereafter, any persons, individuals, or bodies corporate have agreed or shall hereafter agree to issue his, their or its securities, bonds, or other evidences of indebtedness clear of and free from the said four

(60) Union League of Phila. *v.* Ransley, 17 D. R., 599 (1908); 39 Pa. Super. Ct., 514 (1909).

mills tax herein provided for, or have agreed or shall hereafter agree to pay the same, nothing herein contained shall be so construed as to relieve or exempt him, it or them from paying the said four mills tax on any of the said such securities, bonds, or other evidences of indebtedness as may be held, owned by or owing to the said savings institutions having no capital stock: *Provided also,* That this section shall take effect on the first day of January, Anno Domini one thousand, nine hundred and ten."

779. Bonus on Foreign Corporations Having Capital Invested in Pennsylvania.

A foreign corporation which had capital invested in Pennsylvania prior to the passage of the Act of May 8, 1901, P. L. 150, is not subject to the payment of bonus under the provisions of said act either on the amount of the capital employed prior to the act or on any subsequent increase thereof.[61]

A foreign corporation, the principal office of which is outside of Pennsylvania, but which maintains a bank deposit in said state, not used therein for any corporate purpose, is not employing capital therein within the meaning of the Act of May 8, 1901, and is not subject to the payment of bonus under the provisions of the said act.[62]

783. Decisions Relating to Bonus.

The appointment of an assignee or receiver stops the running of interest on bonus.[63]

A corporation organized prior to the Act of 1897 is obliged to pay the rate of bonus provided by that statute, or by later statutes, upon increasing its capital stock, notwithstanding that under the previously existing law it could have increased its capital stock at a lower rate. In such case, however, where the corporation was originally incorporated for one million dollars and

(61) Com. *v.* American Steel Hoop Co., 226 Pa., 6 (1909); 11 Dau. Co. Rep., 92 (1908); Com. *v.* Gandy Belting Co., 12 Dau. Co. Rep., 167 (1909); Com. *v.* Shelby Steel Tube Co., 13 Dau. Co. Rep., 1 (1909); Com. *v.* National Tube Co., 13 Dau. Co. Rep., 3 (1909); Com. *v.* National Steel Co., 13 Dau. Co. Rep., 7 (1909); Com. *v.* American Sheet & Tin Plate Co., 13 Dau. Co. Rep., 11 (1909); Com. *v.* Schwartzschield & Sultzberger Co., 14 Dau. Co. Rep., 30 (1910); 38 Pa. C. C., 265.

(62) Com. *v.* Tonopah Mining Co. of Nevada, 12 Dau. Co. Rep., 91 (1909).

(63) Grand Laundry Co., 36 Pa. C. C., 405 (1909). Op. Dep. Atty. Gen.

a bonus paid on that amount of stock, and subsequently the stock was decreased and thereafter increased to two million dollars, the bonus is due only on the total increase of one million dollars.[64]

785. Acts Imposing the Tax.

Every corporation, joint-stock association, limited partnership, and company whatsoever, from which a report is required under the twentieth section hereof, shall be subject to, and pay into the treasury of the Commonwealth annually, a tax at the rate of five mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred, as ascertained in the manner prescribed in said twentieth section; and it shall be the duty of the treasurer or other officers having charge of any such corporation, joint-stock association, or limited partnership, upon which a tax is imposed by this section, to transmit the amount of said tax to the treasury of the Commonwealth within thirty days from the date of the settlement of the account by the Auditor General and the State Treasurer: *Provided,* That for the purposes of this act, interests in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxable accordingly: *Provided also,* That corporations, limited partnerships, and joint-stock associations, liable to tax on capital stock under this section, shall not be required to pay any further tax on the mortgages, bonds, and other securities owned by them, and in which the whole body of stockholders or members, as such, have the entire equitable interest in remainder; but corporations, limited partnerships, and joint-stock associations owning or holding such securities as trustees, executors, administrators, guardians, or in any other manner than for the whole body of stockholders or members thereof as sole equitable owners in remainder, shall return and pay the tax imposed by this act upon all securities so owned or held by them, as in the case of individuals: *And provided further,* That the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnerships, and joint-stock associations, organized for manufacturing purposes, which is invested in, and actually and exclusively employed in, carrying on manufacturing within the state, excepting companies engaged in the brewing or distilling of spirits or malt liquors, and such as enjoy and exercise the right

(64) Com. *v.* Independence Trust Co., Op. Supreme Ct., unreported, filed July 6, 1911, reversing 14 Dau. Co. Rep., 103, (1911).

of eminent domain; but every manufacturing corporation, limited partnership, or joint stock association shall pay the state tax of five mills herein provided, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to its manufacturing business, in addition to the local taxes assessed upon its property in the district where located; it being the object of this proviso to relieve from state taxation only so much of the capital stock as is invested purely in the manufacturing plant and business: *Provided further,* In case of fire and marine insurance companies, the tax imposed by this section shall be at the rate of three mills upon each dollar of the actual value of the whole capital stock: *Provided,* That nothing in this act shall be so construed as to apply to building and loan associations chartered by the state of Pennsylvania.[65]

792. Reports and Appraisements of Capital Stock.

A tax computed on the value of the capital of a foreign corporation employed in Pennsylvania and not on the value of its capital stock herein invested cannot be sustained. "True, the courts have held that under the tax system of the Commonwealth, of which the Act of 1891 is a part, this tax is a property tax, or a tax on the property which represents the capital stock, but by that we do not understand that the tax is on the property as such. The property and capital stock are not identical; it is the latter which is to be valued and taxed; Com *v.* L. S. & M. S. Railroad Company, 3 Dauphin County Reports, 172; Pullmans Palace Car Co. *v.* Com., 107 Pa. 156; Com. *v.* Telephone Co., 129 Pa. 217. This act is not construed with respect to domestic corporations as taxing their property and assets, and there is no reason for so construing it with respect to foreign corporations. Both are taxed under the same statute, and its construction must necessarily be the same as to both. So much of the capital stock of a foreign corporation, therefore, as is used and employed in the state is taxable at its actual value. In the present case the tax is computed on the value of the property as such, not on the value

(65) Act of June 7, 1911, P. L. 673. This act is, in the main, a reenactment of the Act of June 7, 1907, P. L. 430, amending the first section of the Act of June 8, 1891, P. L. 229, which Act of 1907 was held unconstitutional in Provident Life & Trust Co. *v.* Hammond, 230 Pa. 407 (1911), because of a defect in its title.

of the capital stock. For this there is no warrant in the statute and the claim of the Commonwealth cannot be sustained." [66]

The actual value in cash of the capital stock of a corporation in an appraisement may not be arrived at by adopting as such valuation the value of the gross assets alone without considering the liabilities of the corporation. The franchises, dividends, gross and net earnings, surplus and undivided profits and market price are also items of relative evidence.[67]

The taxation of a corporation upon a valuation of its capital stock made upon a wholly different basis from that applied to settlements against other corporations in the same class, and proportionately much greater, is unconstitutional for want of uniformity.[68]

A foreign corporation consigning belting of its own manufacture to dealers in Pennsylvania under contracts providing that belting of certain dimensions shall become the property of the consignees and paid for under the terms of such contracts, employs capital within the state within the meaning of the acts imposing the tax upon capital stock, and is taxable on the value of so much of its capital stock as is represented by the proportion which its capital employed in Pennsylvania bears to its entire capital.[69]

In ascertaining the actual value in cash of capital stock, all the tangible assets, property, franchises condition of the company and its indebtedness must be considered.[69*]

801. What Proportion of the Capital Stock of Corporations is not Taxable.

A foreign corporation, the corporate business of which is wholly carried on in another state, but which maintains an office in Pennsylvania for the purpose of making transfers of stock, and which keeps a bank deposit in said state, the amount of which

(66) Com. *v.* Schwarzchild & Sulzberger, 12 Dau. Co. Rep., 159 (1909); Com. *v.* Gandy Belting Co., 12 Dau. Co. Rep., 182 (1909).

(67) Com. *v.* Provident Life & Trust Company of Philadelphia, 12 Dau. Co. Rep., 104 (1909).

(68) Com. *v.* Provident Life & Trust Co. of Philadelphia, 12 Dau. Co. Rep., 104 (1909).

(69) Com. *v.* Gandy Belting Co., 12 Dau. Co. Rep., 182 (1909).

(69*) Com. *v.* Pgh. B. & L. E. R. R. Co., 14 Dau. Co. Rep., 146 (1911).

is used in carrying on business without the state, is not taxable upon so much of the capital as is represented by the said deposit.[70]

The capital stock of corporations invested in coal mined by them, which coal is situated in other states, there awaiting sale, is not taxable.[71]

So much of the capital stock of corporations as is invested in the shares of banks, which banks have paid the four-mill tax on their shares on or before March first in each year, is not taxable.[72]

808. What Capital Stock is Actually and Exclusively Employed in "Manufacturing" Within the Exemption.

A corporation which has been engaged in manufacturing but has ceased to do business, although remaining the owner of valuable property, is liable for taxation, and is not exempt on the ground of its being a manufacturing corporation. In such case, the actual value of the stock should be determined by the value of the property which the corporation owns.[73]

A corporation engaged in the manufacture of cement and asphalt floors, pavements and roadways and structural concrete is a manufacturing corporation within the meaning of the Act of June 8, 1893, P. L. 353, and as such entitled to exemption from taxation upon so much of its capital stock as is invested in said business, and a foreign manufacturing corporation doing business in Pennsylvania is entitled to the same exemption as a domestic corporation.[74]

Obligations of domestic corporations held by other domestic corporations paying a capital stock tax are not taxable, but such obligations held by corporations not paying a capital stock tax or by banks not paying the four mills tax on or before the first day of March in each year are taxable.[74*]

(70) Com. *v.* Tonopah Mining Company of Nevada, 12 Dau. Co. Rep., 95 (1909).

(71) Del., Lack. & W. R. R. Company *v.* Pennsylvania, 198 U. S., 341 (1905), reversing Com. *v.* Del., Lack. & W. R. R. Co., 206 Pa., 645 (1903).

(72) Com. *v.* Hazelwood Savings & Trust Co., 38 Pa. C. C., 683 (1911); 14 Dau. Co. Rep., 129.

(73) Com. *v.* Excelsior Brick & Stone Co., 14 Dau. Co. Rep., 82 (1911), affirmed by Supreme Ct., July 6, 1911, unreported.

(74) Com. *v.* Filbert Paving & Construction Co., 229 Pa., 231 (1910); 12 Dau. Co. Rep., 57 (1909).

(74*) Com. *v.* Lake Shore & M. S. Rwy. Co., 14 Dau. Co. Rep., 107 (1911).

A corporation a portion of the capital stock of which is held by a municipal corporation is not relieved from the payment of tax on its loans.[74**]

819. Corporate Loans Exempt From Taxation.

Promissory notes of corporations held and owned by incorporated state and savings banks, which have paid the four mills tax on their shares of stock on or before the first day of March in each year, are not taxable, and it is immaterial whether such notes are regularly discounted by the banks or interest is paid on them when they fall due.[75]

The exemption from taxation contained in the proviso to the Act of June 15, 1897, P. L. 293, embraces state as well as local taxes and exempts corporate as well as individual loans.[76]

Banks and savings institutions paying the four mills tax upon the actual value of their shares of stock, surplus and undivided profits, on or before the first day of March in each year, are not taxable on bonds, mortgages, etc., owned by them in their own right, and the treasurers of Pennsylvania corporations, the obligations of which are owned by such banks or savings institutions, are not required, on the payment of interest on such obligations, so held, to deduct and pay the tax on corporate loans on such obligations.[77]

The bonds, mortgages, etc., owned by banks and savings institutions electing to pay the ten mills tax on the par value of their shares of stock, surplus and undivided profits are, however, subject to the tax on personal property and the tax on corporate loans.[78]

The Commonwealth cannot impose upon a foreign corporation the duty, when paying in another state the interest due upon scrip, bonds or certificates of indebtedness held by residents of Pennsylvania, of deducting from the interest so paid the amount of tax on loans in the hands of residents of Pennsylvania.[79]

(74**) Com *v.* Carlisle Gas & Water Co., 14 Dau. Co. Rep., 133 (1911).
(75) Com. *v.* White Haven Water Co., 11 Dau. Co. Rep., 22 (1908).
(76) Com. *v.* White Haven Water Co., 11 Dau. Co. Rep., 22 (1908).
(77) Com. *v.* Clairton Steel Co., 222 Pa., 293 (1908).
(78) Com. *v.* Clairton Steel Co., 222 Pa., 293 (1908).
(79) Com. *v.* N. Y. C. & H. R. R. R. Co., 14 Dau. Co. Rep., 68 (1911).

820. Decisions.

The fact that bonds taxable in this state under the Act of June 8, 1891, P. L. 229, have been pledged as collateral security by the owners thereof to persons not residents of Pennsylvania does not affect the duty of the owners of the said bonds to pay taxes thereon in Pennsylvania.[80] And the same is true where the bonds are held by non-residents to secure indemnity.[80*]

825. Decisions Relative to Tax on Gross Receipts.

A municipal corporation owning stock in a private corporation furnishing electric light to a borough, owns said stock in a private capacity, and such private corporation is liable for tax on its entire gross receipts.[81]

A street railway corporation is not liable for tax on so much of its gross receipts as is derived from the sale of electric current, and the rental of its tracks.[81*]

A railroad corporation is not liable for tax on gross receipts derived from car-mileage and per diem compensation received for the use of its cars upon other lines.[82]

833. Bonds, Mortgages, Etc., Held by Banks.

Banks and savings institutions paying the four mills tax upon the actual value of their shares of stock, surplus and undivided profits, on or before the first day of March in each year, are not taxable on bonds, mortgages, etc., owned by them in their own right, and the treasurers of Pennsylvania corporations, the obligations of which are owned by such banks or savings institutions, are not required, on the payment of interest on such obligations so held to deduct and pay the tax on corporate loans on such obligations.[83]

The bonds, mortgages, etc., owned by banks and savings institutions electing to pay the ten mills on the par value of their shares of stock, surplus and undivided profits are, however, sub-

(80) Com. *v.* Buffalo & Lake Erie Traction Co., 14 Dau. Co. Rep., 114 (1911), affirmed by Supreme Ct., July 6, 1911, unreported.

(80*) Com. *v.* Hudson Coal Co., 14 Dau. Co. Rep., 137 (1911).

(81) Com. *v.* Carlisle Gas & Water Co., 14 Dau. Co. Rep., 142 (1911).

(81*) Com. *v.* Lehigh Valley Transit Co., 14 Dau. Co. Rep., 88 (1911).

(82) Com. *v.* Buffalo & Susquehanna R. R. Co., 14 Dau. Co. Rep., 117 (1911).

(83) Com. *v.* Clairton Steel Co., 222 Pa., 293 (1908).

ject to the tax on personal property and the tax on corporate loans.[84]

Unless the four-mill tax is paid by state and savings banks on or before the first day of March in each year, such banks are taxable upon the bonds, mortgages, etc., held by them.[85]

835. Taxation of Trust Companies.

The Act of June 13, 1907, P. L. 640, is constitutional but is not retroactive, and the shares of stock of trust companies were taxable from the first Monday of November, 1906, to June 13, 1907, under the provisions of the Act of June 8, 1891, P. L. 229, although the latter act was repealed by the said Act of June 13, 1907, which act does not contain a saving clause reserving the right to collect such accrued taxes.[86]

Banks incorporated under special acts and possessing, in addition to their banking powers the power to transact to a limited extent the business of a trust company, which trust business they transact to a very small extent, are not subject to taxation as trust companies under the Act of June 13, 1907, but are taxable as banks under the Act of July 15, 1897.[86*]

837. Decisions Relative to Tax on Gross Premiums of Foreign Insurance Companies.

The tax is laid on the gross premiums of every character and description, and no abatement may be allowed by the Insurance Commissioner on account of dividends allowed to policyholders.[87]

889. Powers of Artificial Gas Companies—Regulations.

A gas company which has leased the public gas plant of a city may, in the absence of any prohibition in its lease, require citizens desiring to become consumers of gas to sign a contract agreeing to submit to a regulation that if a bill for gas be not paid within

(84) Com. *v.* Clairton Steel Co., 222 Pa., 293 (1908).

(85) Com. *v.* Clairton Steel Company, 229 Pa., 246 (1910); 12 Dau. Co. Rep., 195 (1909).

(86) Com. *v.* Mortgage Trust Company of Pa., 227 Pa., 163 (1910), reversing 12 Dau. Co. Rep., 24 (1909).

(86*) Com. *v.* Peoples' Bank of Wilkes-Barre, 14 Dau. Co. Rep., 85 (1911); Com. *v.* Anthracite Savings Bank of Wilkes-Barre, 14 Dau. Co. Rep., 91 (1911); Com. *v.* Miners' Savings Bank of Wilkes-Barre, 14 Dau. Co. Rep., 95 (1911).

(87) North Western Mutual Life Ins. Co., 36 Pa. C. C., 100 (1909).

ten days the flow of gas may be stopped, and a penalty of three per cent. may be added to the bill if not paid within five days after presentation. A citizen who has signed such contract has no status to maintain a bill for an injunction to restrain the shutting off of gas, or the imposition of the penalty of three per cent.[88]

908. Municipal Regulation of and Impositions on Artificial Gas Companies.

A borough may, in the exercise of its police power, regulate, inspect and supervise the construction and maintenance on its streets of the pipe line of an incorporated gas company, and impose a reasonable charge to reimburse it for the probable expense of such inspection. In determining whether such charges are proper the presumption is that the borough officers act in good faith, and have regard only to the purposes for which an ordinance may lawfully be enacted. In an action by a borough to recover charges for opening a street, the borough is not required to show the cost of supervision and inspection in the presentation of its case in chief, where there is nothing to indicate that the imposition was enacted for revenue purposes under the guise of a police regulation. The burden is upon the defendant to prove that the charge is clearly unreasonable and the ordinance invalid. A municipality in fixing license fees for opening a street may make a charge large enough to cover any anticipated expense, and the payment of the fee may not be avoided because it may subsequently appear that it is somewhat in excess of the actual expense of supervision.[89]

An ordinance imposing a license fee of $3.00 for a permit to open a street for each opening not exceeding three feet wide and thirty feet long and a charge of five cents per square foot for any additional opening in width and length at the same time and place, is unreasonable and void, where it appears that the borough enacting the ordinance expended nothing for supervision and inspection until three years after certain excavations sought to be charged for had been made, and the evidence for the company charged with the license fee shows that the work of refilling had been carefully done, that defects had been promptly repaired and

(88) Bower *v.* United Gas Imp. Co., 37 Pa. Super. Ct., 113 (1908).

(89) Chambersburg *v.* Chambersburg Gas Company, 38 Pa. Super. Ct., 311 (1909).

that the license fee claimed was greatly in excess of the actual cost of making, refilling and repairing the openings made by the company.[90]

A township of the second class has no authority to adopt through its supervisors a resolution imposing restrictions and conditions upon the opening of highways for the laying of pipes and the erection of poles by gas and electric companies, and requiring the payment of license fees by all who so occupy the highways.[91]

923. Dissolution of Banking Companies for Non-User.

All corporations in this Commonwealth, having the right to receive deposits of money, and to do a banking business, which have not paid in the capital required by law, and have not in any manner exercised the powers conferred upon them by their letters patent, or which have failed to exercise their corporate privileges for two years after having been liquidated, shall be returned by the Banking Commissioner to the Attorney General, who shall proceed by quo warranto, in the proper jurisdiction, against such companies, to the end that they may be ousted from their charter rights and their corporate privileges be declared null and void.[92]

923a. Penalty for Circulating Untrue Statements Derogatory to the Financial Condition of Banks, Etc.

Any person who shall make, utter, circulate, or transmit to another, or others, any statement untrue in fact, derogatory to the financial condition of any bank, banking house, banking company, trust company, surety company, guarantee company, title insurance company, or other financial institution in this Commonwealth, with intent to injure any such financial institution; or who shall counsel, aid, procure, or induce another to originate, make, utter, transmit, or circulate any such statement or rumor, with like intent,—shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars ($5,000), and by imprisonment at hard labor for a term not exceeding five (5) years.[93]

(90) Pottsville Borough *v.* Pottsville Gas Co., 39 Pa. Super. Ct., 1 (1909).

(91) Easttown Township *v.* Merion & Radnor Gas & Electric Co., 35 Pa. C. C., 497 (1908).

(92) Act of April 23, 1909, P. L. 143.

(93) Act of April 23, 1909, P. L. 171.

935. Capital Stock of Banks.

No corporation shall be organized under this act with a capital stock of less than fifty thousand dollars, if the principal place of business of said corporation shall be in a town or city of more than five thousand inhabitants; nor with a capital stock of less than twenty-five thousand dollars, if the principal place of business of said corporation shall be in a town of less than five thousand inhabitants; which capital stock shall be divided into shares of not less than fifty dollars each, which shall be deemed personal property and transferable on the books of the corporation in such manner as may be prescribed by the by-laws and articles of association thereof; and every person to whom stock shall be transferred as aforesaid, shall, in proportion to the shares received, succeed to all the rights and liabilities of the prior holders thereof, and no change shall be made in the articles of association by which the rights, remedies, or securities of the existing creditors of the corporation shall be impaired. The shareholders of any corporation formed under this act shall be individually responsible, equally and ratably, but not one for the other, for all contracts, debts, and engagements of such corporation to the amount of their stock therein, at the par value thereof, in addition to the par value of such shares.[94]

945a. Directors to Take Oath.

Each and every director of a bank of discount, banking company, co-operative banking association, trust company, safe deposit company, real estate company, mortgage company, title insurance company, guarantee company, surety and indemnity company, and savings bank, which has been or may hereafter be incorporated under the laws of this Commonwealth, with the right to receive moneys on deposit shall, when appointed or elected, and before assuming the duties of the office, take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation. and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner, in good faith and in his own right, of shares of the capital stock subscribed by him, or standing in his name on the books of the corporation of which he has been appointed

(94) Sec. 1, Act of May 3, 1909, P. L. 412, amending Sec. 5, Act of May 13, 1876, P. L. 162.

or elected a director, the par value of which shall aggregate at least three hundred dollars, and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be subscribed by the director making it, and immediately transmitted to the Commissioner of Banking, by whom it shall be filed.[95]

950. Regulation of Loans to Directors and Others—Debts Owing to the Corporation—Liens on Stock.

A borrowed money from the B bank and as security for the loan pledged shares of stock in the C bank. Before default the stock was sold and purchased by D. The C bank refused to allow the shares to be transferred, claiming that A was indebted to it, and that it had a prior claim on such stock under the Act of May 13, 1876, Section 21, which provides that shares in a bank may not be transferred while the holder is indebted to the bank. Held, that said provision of the Act of 1876 was inconsistent with and repealed by the Act of June 24, 1905, P. L. 258, providing for the issuing of certificates of stock and their transfer, and that D was therefore entitled to have the stock transferred on the books of the bank.[96]

1002. Definition of "Immediate Demand Liability" and "Time Deposits."

In computing the aggregate of all the immediate demand liabilities of banking institutions subject to the provisions of the Act of May 8, 1907, P. L. 189, notes payable on demand by such institutions for borrowed money should be included.[97]

1011. Organization and Incorporation of Secret Fraternal Beneficial Societies.

A beneficial association to be operated upon the lodge system, having a superior organization with various branches, may not be incorporated under the Act of April 29, 1874, but must be organized under the provisions of the Act of April 6, 1893, P. L. 10.[97*]

(95) Act of June 3, 1911, P. L. 652.

(96) Bank of Millvale *v.* Ohio Valley Bank, 58 Pitts., 329 (1910).

(97) Reserve Fund of Banking Institutions, 11 Dau. Co. Rep., 65 (1908). See *contra,* United Mutual Benefit Assn., 36 Pa. C. C. (1909).

(97*) In re Shillington Council No. 186, O. I. A., 3 Berks, 177 (1910).

The Act of April 6, 1893, P. L. 10, embodies a complete system for the incorporation of secret fraternal beneficial societies. It is not an amendment or supplement to the general corporation act of 1874.[98]

1015. Granting of Charters to Beneficial and Fraternal Associations.

Where it appears upon an application for a charter for a secret fraternal beneficial society, under the Act of April 6, 1893, P. L. 10, that the plan upon which the society is to be organized is unlawful or injurious to the community, the charter will not be approved, notwithstanding that Section 4 of said act provides that the court shall approve the charter "if the same shall be found to be in proper form and within the purposes named in this act," and omits the further provision, contained in Section 3 of the Act of April 29, 1874, P. L. 73, making the approval dependent upon the judgment of the court that the charter is "lawful and not injurious to the community." [99]

1029. Beneficial Associations are Not Insurance Companies.

Associations formed for beneficial or protective purposes to members from funds collected therein, under the provisions of the Act of April 29, 1874, are not insurance companies, and their certificates of membership are not contracts of insurance within the meaning of the Act of April 4, 1873, P. L. 20, entitled "An act to establish an insurance department."[100]

1039. Incorporation Authorized.

See Section 70.

1049. Decisions as to Boom and Logging Companies Incorporated Under Special Acts.

Where a company's charter authorizes it to erect and maintain a boom on a river, but confers no right to, or control over, the waters of the river other than those incidental to the maintenance of the boom, it may use the water for no other purpose nor grant authority to another to use it for any other purpose, and where by a supplement to its charter the company is required before

(98) Lady Foresters of America, 36 Pa. C. C., 531 (1909); 18 D. R., 780.

(99) In re International Mutual Benefit Society, 18 D. R., 681 (1909).

(100) Hayes *v.* German Beneficial Union, 35 Pa. Super. Ct., 142 (1907).

proceeding to erect the dam to file a bond in court conditioned that the company will indemnify the landholders adjacent to the dam against all losses or damages of any nature whatsoever that may occur to their lands by reason of the construction of the dam, the company acquires its easement freed from the power of the adjacent owner to obtain payment otherwise than upon the bond, and if such owners have not availed themselves of the security afforded by the bond, they cannot compel the company, by a proceeding in equity, to open the gates of the dam and supply them with water.[1]

1086. Acquisition of Toll Bridges by Counties.

When any turnpike road company, bridge company, or other corporation, has heretofore erected or may hereafter erect, by authority of general or special laws, any bridge over a river, creek, or rivulet crossing any road or highway on which the public are required to travel, and such company or corporation is authorized to charge and take tolls for the use and crossing of such bridge, and at least twenty residents and taxpayers of the county, where such bridge is situated, shall petition the court of quarter sessions of said county, or if said bridge be located on a river, creek, or rivulet dividing two counties, then upon the petition of at least twenty residents of each county, representing that the said bridge is necessary to the accommodation of public travel and that the payment of tolls over such bridge is burdensome to the traveling public, and praying that the same shall be taken as a county bridge, the said court shall appoint three disinterested persons to view the said bridge and assess the damage, if any, which such company or corporation may sustain by the taking of the same, and make report of their proceedings to the respective court at the next term thereof: *Provided,* That notice shall be given in at least one newspaper, published at the county-seat, of such intended application, for at least three weeks before the presentation of such petition: *Provided further,* That when two or more toll-bridges cross the same stream and lead to the same streets or general thoroughfares, and are situated within one-fourth mile of each other, no purchase of any one of said bridges shall be made, under this act, unless the assent of the

(1) Citizens Electric Company *v.* Susquehanna Boom Company, 227 Pa., 448 (1910).

stockholders of the remaining bridge or bridges be first had at a meeting called for that purpose.[2]

The several counties of this Commonwealth are authorized to purchase or condemn any public toll-bridge crossing any river, rivulet, stream, or ravine within the limits of such county, where the same connects different municipal divisions of such county. Proceedings for the purchase or condemnation of a bridge, under this act, may be instituted by said county, upon approval thereof by the court of quarter sessions of such county, on petition of at least twenty taxpayers of the county in which such bridge is situate, representing that such bridge is necessary to the accommodation of public travel and that payment of tolls on such bridge is burdensome to the traveling public, and praying that same shall be taken as a county bridge.[3]

1086a. Appointment of Viewers.

In case the county, after the approval of said petition by the court, desires to obtain any such bridge, and is unable to agree with the owner or owners of the bridge upon the price to be paid therefor, any court of common pleas of the county wherein said bridge is located, or any law judge thereof in vacation, on application therefor by petition of such county, shall appoint three discreet and disinterested persons as viewers, and shall appoint a time, not less than ten nor more than twenty days thereafter, when said viewers shall meet and inspect the said bridge and view the same, together with the approaches and appurtenances thereto.[4]

1086b. Hearings—Report of Viewers.

The said viewers, having been duly sworn or affirmed justly and impartially to decide and true report to make concerning all

(2) Act of April 27, 1911, P. L. 91, amending Sec. 1, Act of May 8, 1876, P. L. 131. The last proviso as contained in the original Act of 1876, was repealed by the Act of June 10, 1881, P. L. 96, but is restored by the above amendment.

(3) Sec. 1, Act of May 5, 1911, P. L. 109. This act does not in terms repeal the Act of March 24, 1909, P. L. 73, but as it is a re-enactment of said act, with minor changes, it doubtless supersedes it.

(4) Sec. 2, Act of May 5, 1911, P. L. 109. It will be observed that this act covers practically the same ground as the Act of May 8, 1876, P. L. 131, but does not repeal the same. Hence toll bridges may be taken by counties under either act, or, where the bridge is over a stream separating parts of a county, by the Act of May 5, 1899, P. L. 231.

matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance to the provisions of this act, and having viewed the said bridge, together with the approaches and appurtenances thereto, shall hear all parties interested and their witneses, and shall estimate and determine the damages for the property taken and to whom the same is payable, and prepare a schedule thereof; and shall give not less than ten days notice to all parties interested of the time and place where they will meet and exhibit said schedule and hear all objections thereto and evidence thereon. The said notice shall be given by personal service upon all parties in interest or their attorneys of record residing in such county, if such residence is known, and to all others by publication by one insertion in one newspaper of general circulation published in such county. After hearing the parties desiring to be heard in reference to said schedule at the time designated, and making whatever changes shall be deemed necessary, the said viewers shall make report to the court, showing the damages allowed and to whom the same are payable, and file therewith a plan showing the bridge, together with the approaches and appurtenances thereto and all exceptions that may be filed to their said schedule.[5]

1086c. When Viewers may be Appointed—Costs.

The viewers provided for in the foregoing sections may be appointed before or at any time after the entry, taking or appropriation of such bridge, together with the approaches and appurtenances thereto. The cost incurred in the proceedings aforesaid shall be defrayed by the county, and each of the viewers shall receive such compensation as the court may determine.[6]

1086d. Exceptions to Viewers Report—Appeal—Procedure.

Upon the report of said viewers, or any two of them, being filed in said court, either party may within thirty days thereafter file exceptions to the same; and the court shall have power to confirm said report, or to modify, change or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report; or, within thirty days from the filing of any such report in court, either party may, within thirty days after final decree, appeal to the superior or to

(5) Sec. 3, Act of May 5, 1911, P. L. 109.
(6) Sec. 4, Act of May 5, 1911, P. L. 109.

the supreme court, according to law. Upon final confirmation, in any of the cases provided in this section, the award shall be good and valid judgment against the county. The said court of common pleas shall have power to designate what notice shall be given in connection with any part of said proceedings, and may make all such orders as may be deemed requisite.[7]

1086e. Bond for Damages.

In case of compensation to be paid for any bridge, which the county desires to obtain, cannot be agreed upon between the county and the owners thereof, and the county desires to take possession of said bridge, it shall be lawful for it to tender its bond as security to the owner or owners of such bridge; the condition of which bond shall be that the said county shall pay or cause to be paid such amount of damages as the owner or owners thereof shall be entitled to receive, after the same shall have been agreed upon by the parties in interest, or awarded in the manner provided for by this act. In case the owner or owners of such bridge shall refuse to, or do not accept such bond, it shall be lawful for such county, after five days' written notice to the owner or owners or attorney of record, to present the same to the court of common pleas appointing said viewers, and, on approval thereof, said bridge shall become the property of such county.[8]

1086f. Discontinuance of Proceeding by County.

In case the county shall discontinue any proceeding taken, providing for the appropriation or condemnation of any bridge, as hereinbefore set forth, prior to the entry upon, taking or appropriation thereof, and before judgment therein, the said county shall not thereafter be liable to pay any damages which have been, or might have been, allowed; but all costs upon any such proceedings had thereon shall be paid by the county, together with any actual damages, loss, or injury sustained by reason of such proceeding; the amount of the same may be determined and fixed by the court in which such proceeding was pending.[9]

(7) Sec. 5, Act of May 5, 1911, P. L. 109.
(8) Sec. 6, Act of May 5, 1911, P. L. 109.
(9) Sec. 7, Act of May 5, 1911, P. L. 109.

1086g. County to Control and Maintain Bridge After Condemnation —Tolls for Use of Bridge by Corporations.

Whenever any bridge shall be purchased or condemned under the provisions of this act, the county shall control, maintain, and use said bridge as a public bridge; but it shall have power to charge tolls or rentals for the use thereof, from railway, telephone and telegraph companies, and other persons making use thereof for other than ordinary public foot and vehicle travel: *Provided,* That where contracts exist between such persons and the owners of the bridge, such contract shall be preserved for the benefit of the county and shall be assigned thereto.[10]

1091. Appeal from Awards.

The 4th section of the Act of May 3, 1878, P. L. 42, providing for appeals in proceedings for the acquisition of toll bridges by the several counties of the Commonwealth, under the provisions of the Act of May 8, 1876, is not unconstitutional because such provision is not referred to in the title of said act.[11]

1100. Condemnation of Bridges in Cities.

The several municipalities of this Commonwealth are authorized to purchase or condemn any public toll-bridge crossing any river or stream within the limits of such municipalities.[12]

1100a. Appointment of Viewers.

In case the municipality desires to obtain any such bridge, and is unable to agree with the owner or owners of the bridge upon the price to be paid therefor, any court of common pleas of the county wherein said bridge is located, or any law judge thereof in vacation, on application therefor by petition of said municipality, shall appoint three discreet and disinterested persons as viewers, and appoint a time, not less than ten nor more than twenty days thereafter, when said viewers shall meet and inspect the said bridge and view the same, together with the approaches and appurtenances thereto.[13]

(10) Sec. 8, Act of May 5, 1911, P. L. 109.

(11) Bellevernon Bridge Company, 58 Pitts., 412 (1910).

(12) Sec. 1, Act of March 24, 1909, P. L. 67.

(13) Sec. 2, Act of March 24, 1909, P. L. 67.

1100b. Hearings—Report of Viewers.

The said viewers, having been duly sworn or affirmed justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire, in pursuance of the provisions of this act, and having viewed the said bridge, together with the approaches and appurtenances thereto, shall hear all parties interested and their witnesses; and shall estimate and determine the damages for the property taken, and to whom the same is payable; and prepare a schedule thereof, and give notice to all parties interested of a time, not less than ten days thereafter, and of a place where they will meet and exhibit said schedule and hear all objections thereto and evidence. Notice of the time and place of said meeting shall be given, by personal service, upon all parties in interest, or their attorneys of record. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing the damages allowed and to whom the same is payable, and file therewith a plan showing the bridge, together with the approaches and appurtenances thereto.[14]

1100c. When Viewers May be Appointed—Costs.

The viewers provided for in the foregoing sections may be appointed before, or at any time after, the entry, taking, or appropriation of the said bridge, together with the approaches and appurtenances thereto. The costs incurred in the proceedings aforesaid shall be defrayed by the municipality, and each of the viewers shall receive such compensation as may be fixed by the court.[15]

1100d. Bond for Damages.

If the compensation to be paid for any bridge, which the municipality desires to obtain, cannot be agreed upon between the owners thereof and such municipality, and if the municipality desires to take possession of such bridge, it shall be lawful for it to tender its bond as security to the owner or owners of such bridge, —the condition of which shall be that the said municipality shall pay or cause to be paid such amount of damages as the owner or owners thereof shall be entitled to receive, after the same shall have been agreed upon by the parties, or awarded in the manner provided for by this act. In case the owner or owners of such

(14) Sec. 3, Act of March 24, 1909, P. L. 67.
(15) Sec. 4, Act of March 24, 1909, P. L. 67.

bridge refuse or do not accept the said bond, the said municipality shall give the owner or owners thereof written notice of the time when the same will be presented for approval; and may present said bond to a court of common pleas of the county wherein said bridge is located, and, when approved, the said bond shall be filed in court for the benefit of said owner or owners, and upon the approval of said bond said municipality may enter upon, appropriate, take, hold, use, and control such bridge.[16]

1100e. Exceptions to Viewers' Report—Appeal—Procedure.

Upon the report of said viewers, or any two of them, being filed in said court, either party may within thirty days thereafter file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report; or, within thirty days from the filing of any report in court, or the final confirmation thereof, either party may appeal and demand a trial by jury; and either party may within thirty days after final decree, have an appeal to the Superior or to the Supreme Court, according to law. Upon final confirmation, in any of the cases provided in this section, the award shall be a good and valid judgment against the said municipality. The said court of common pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it may deem requisite.[17]

1100f. Discontinuance of Proceeding by City.

In case any municipality shall discontinue any proceeding taken, providing for the appropriation or condemnation of any bridge, prior to the entry upon, taking, or appropriation thereof, and before judgment therein, the said municipality shall not thereafter be liable to pay any damages which have been or might have been allowed; but all costs upon any proceedings had thereon shall be paid by it, together with any actual damage, loss, or injury sustained by reason of such proceedings; and such damage, loss, or injury shall be determined and fixed by the court in which the proceedings are pending.[18]

(16) Sec. 5, Act of March 24, 1909, P. L. 67.
(17) Sec. 6, Act of March 24, 1909, P. L. 67.
(18) Sec. 7, Act of March 24, 1909, P. L. 67.

1100g. City to Control and Maintain Bridge After Condemnation—Toll for Use of Bridge by Corporations.

Whenever any bridge shall be purchased or condemned under this act, the municipality shall control, maintain, and use the said bridge as a public bridge; but it shall have power to charge tolls or rentals, for the use thereof, from railway, telephone, and telegraph companies, and other persons making use thereof for other than ordinary public foot and vehicle travel: *Provided,* That where contracts exist between such persons and the owners of the bridge, such contracts shall be preserved for the benefit of the municipality, and shall be assigned thereto.[19]

1100h. Condemnation of Bridges in Cities, Cost to be Divided Between City and County.

The several municipalities of this Commonwealth are authorized to purchase, condemn, maintain, and use any public toll-bridge crossing any river or stream within the limits of such municipality; and to enter into contracts as hereinafter provided, with the county commissioners of the proper county whereby said county shall pay a portion of the cost thereof.[20]

1100i. Appointment of Viewers.

In case the municipality desires to obtain any such bridge, and is unable to agree with the owner or owners of the bridge upon the price to be paid therefor, any court of common pleas of the county wherein said bridge is located, or any law judge thereof in vacation, on application therefor by petition of said municipality, shall appoint three discreet and distinterested persons as viewers: and appoint a time, not less than ten nor more than twenty days thereafter, when said viewers shall meet and inspect the said bridge and view the same, together with the approaches and appurtenances thereto.[21]

1100j. Hearings—Report of Viewers.

The said viewers, having been duly sworn or affirmed justly and impartially to decide and true report to make concerning all

(19) Sec. 8, Act of March 24, 1909, P. L. 67.

(20) Sec. 1, Act of March 24, 1909, P. L. 69. This act is precisely the same as the foregoing act, except as to the 8th section thereof, which provides for an agreement with counties for the maintaining of bridges taken or condemned under the act.

(21) Sec. 2, Act of March 24, 1909, P. L. 69.

matters and things to be submitted to them, and in relation to which they are authorized to inquire, in pursuance of the provisions of this act, and having viewed the said bridge, together with the approaches and appurtenances thereto, shall hear all parties interested and their witnesses; and shall estimate and determine the damages for the property taken, and to whom the same is payable; and prepare a schedule thereof, and give notice to all parties interested of a time, not less than ten days thereafter, and of a place where they will meet and exhibit said schedule, and hear all objections thereto and evidence. Notice of the time and place of said meeting shall be given by personal service upon all parties in interest, or their attorneys of record. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing the damages allowed and to whom the same is payable, and file therewith a plan showing the bridge, together with the approaches and appurtenances thereto.[22]

1100k. When Viewers May be Appointed—Costs.

The viewers provided for in the foregoing sections may be appointed before, or at any time after, the entry, taking, or appropriation of the said bridge, together with the approaches and appurtenances thereto. The costs incurred in the proceedings aforesaid shall be defrayed by the municipality, and each of the viewers shall receive such compensation as may be fixed by the court.[23]

1100l. Bond for Damages.

If the compensation to be paid for any bridge, which the municipality desires to obtain, cannot be agreed upon between the owners thereof and such municipality, and if the municipality desires to take possession of such bridge, it shall be lawful for it to tender its bond as security to the owner or owners of such bridge, —the condition of which shall be that the said municipality shall pay or cause to be paid such amount of damages as the owner or owners thereof shall be entitled to receive, after the same shall have been agreed upon by the parties, or awarded in the manner provided for by this act. In case the owner or owners of such bridge refuse or do not accept the said bond, the said municipality shall give the owner or owners thereof written notice of the time

(22) Sec. 3, Act of March 24, 1909, P. L. 69.
(23) Sec. 4, Act of March 24, 1909, P. L. 69.

when the same will be presented for approval; and may present said bond to a court of common pleas of the county wherein said bridge is located; and, when approved, the said bond shall be filed in court for the benefit of said owner or owners, and upon the approval of said bond said municipal corporation may enter upon, appropriate, take, hold, use, and control such bridge.[24]

1100m. Exceptions to Viewers' Report—Appeals—Procedure.

Upon the report of said viewers, or any two of them being filed in said court, either party may within thirty days thereafter file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report; or, within thirty days from the filing of any report in court, or the final confirmation thereof, either party may appeal and demand a trial by jury; and either party may, within thirty days after final decree, have an appeal to the Superior or to the Supreme Court, according to law. Upon final confirmation, in any of the cases provided in this section, the award shall be a good and valid judgment against the said municipality. The said court of common pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it may deem requisite.[25]

1100n. Discontinuance of Proceeding by City.

In case any municipality shall discontinue any proceeding taken, providing for the appropriation or condemnation of any bridge, prior to the entry upon, taking, or appropriation thereof, and before judgment therein, the said municipality shall not thereafter be liable to pay any damages which have been or might have been allowed; but all costs upon any proceeding had thereon shall be paid by it, together with any actual damage, loss, or injury sustained by reason of such proceedings; and such damage, loss, or injury shall be determined and fixed by the court in which the proceedings are pending.[26]

(24) Sec. 5, Act of March 24, 1909, P. L. 69.
(25) Sec. 6, Act of March 24, 1909, P. L. 69.
(26) Sec. 7, Act of March 24, 1909, P. L. 69.

1100o. Agreement Between City and County as to Sharing Cost of Condemnation.

Said municipality may enter into and unite in a contract with the county commissioners of the county in which said bridge is located, upon such terms and conditions as may be agreed upon, for the purchase, appropriation, or condemnation of said bridge. The contract may stipulate that the respective municipality and county shall pay a certain part or portion of the whole purchase price or damages allowed by condemnation proceedings. The amounts to be paid by the county shall be paid into the municipal treasury; and, upon said payment, the municipal treasurer shall be liable therefor, and it shall be held and applied solely for the said purpose or purposes. The said agreement may also provide for and include provisions for the maintenance, repair, and building of the said bridge, after its purchase or condemnation by the said municipality.

Before any county shall enter into any contract with any municipality, as aforesaid, a petition of at least twenty taxpayers of the county, where such bridge is situated, shall have been presented to the court of quarter sessions of said county,—representing that the said bridge is necessary to the accommodation of public travel, and that the payment of tolls over such bridge is burdensome to the traveling public, and that a municipality in said county is desirous of purchasing or condemning, maintaining, and using said bridge, and of entering into a contract with said county whereby the said county shall pay a portion of the cost thereof, and praying the said court for an order authorizing and empowering the commissioners of said county to enter into such a contract with said municipality, upon the terms and conditions set forth in said petition,—and the said court shall have granted the prayer of said petition.[27]

1100p. Maintenance of Bridge After Condemnation—Tolls for Use of Bridge by Corporation.

Whenever any bridge shall be purchased or condemned under this act, the municipality shall control, maintain, and use the said bridge as a public bridge; but it shall have power to charge tolls or rentals, for the use thereof, from railway, telephone, and telegraph companies, and other persons making a use thereof for other than ordinary public foot and vehicle travel: *Provided,*

(27) Sec. 8, Act of March 24, 1909, P. L. 69.

That where contracts exist between such persons and the owners of the bridge, such contracts shall be preserved for the benefit of the municipality and shall be assigned thereto.[28]

1100q. Repeal of Act of May 1, 1861, P. L. 450.

The act of Assembly of May first, one thousand eight hundred and sixty-one, entitled "An act relating to Allegheny county" (Pamphlet Laws, four hundred and fifty), so far as it is inconsistent herewith or supplied hereby, and all other acts and parts of acts, general, special, or local, inconsistent herewith or supplied hereby, be and the same are hereby repealed.[29]

1116. Powers of Ferry Companies.

A ferry company may not land its traffic nor moor its boats at the terminus of a public road without the consent of the riparian owner.[30]

1129. Officers of Building and Loan Associations.

From and after the passage of this act, the same individual shall not be, at the same time, the holder of more than one of the following offices; namely, president, vice-president, secretary, treasurer, or solicitor of any building and loan association, incorporated under the laws of this Commonwealth.[31]

1129b. Penalty.

Any and every building and loan association, incorporated under the laws of this Commonwealth, which has more than one of said offices held or filled, at the same time, by the same individual, shall be liable to a fine in the sum of five hundred dollars, to be collected by lawful process instituted by the Attorney General of this Commonwealth, on information furnished by the Commissioner of Banking, to be paid to the Treasurer of the Commonwealth, for the use of the Commonwealth.[32]

1165. Cemetery Companies.

On and after the passage of this act, no charter or proposed charter of any burial or cemetery company, either of first or sec-

(28) Sec. 9, Act of March 24, 1909, P. L. 69.
(29) Sec. 10, Act of March 24, 1909, P. L. 69.
(30) Hower *v.* Garrett, 36 Pa. C. C., 33 (1909); 18 D. R., 847.
(31) Sec. 1, Act of April 29, 1909, P. L. 289.
(32) Sec. 2, Act of April 29, 1909, P. L. 289.

ond class of corporations, shall be granted or obtained in this Commonwealth; and it shall be the duty of any court of this Commonwealth, or any judge thereof, or the Governor of this Commonwealth, to refuse to approve of such charter or proposed charter; unless the said charter or proposed charter shall set forth a provision, clearly and fully, that a sum equal to at least one-tenth of the gross amount of the funds arising from the sale of lots in said burial-ground or cemetery shall be set apart for the perpetual care and preservation of the grounds, and the repair and renewal of the buildings and property of said burial or cemetery company; which fund, so set apart by the directors or managers of said burial or cemetery company, shall be invested by them, in trust, for the uses and purposes of said trust, and the income arising therefrom to be applied by them to the purposes aforesaid. The directors or managers shall, in one year after the incorporation of any cemetery or burial-ground, and annually thereafter, file with the clerk of courts of the county in which said cemetery or burial-ground is situate, a bond with sufficient sureties, to be approved by the court of quarter sessions, for the faithful performance of the trust herein imposed, for perpetual care and preservation of grounds and property; such bond to be in the full amount of the trust investment at the time said bond is approved, as aforeprovided.[33]

A charter for a cemetery association will not be granted where the certificate provides that the directors of the association shall be elected by the trustees of a special church corporation.[34]

1165a. Incorporation of Cemetery Companies to Control Burial Grounds in Boroughs.

When the title, control, and management of any burial-ground in this Commonwealth is vested, by deed, dedication, or otherwise, in a borough, it shall be lawful for the council of such borough, upon the petition of ten lot owners in said burial-ground, to transfer said burial-ground, and the control of the management thereof, to an incorporated cemetery company.[35]

Upon the presentation to said council of the petition of ten lot owners, as provided for by this act, the council of said borough

(33) Sec. 1, Act of March 18, 1909, P. L. 41.

(34) North Forest Cemetery Association's charter, 36 Pa. C. C., 576 (1909); 19 D. R., 730.

(35) Sec. 1, Act of April 23, 1909, P. L. 155.

may pass an ordinance declaring, that upon the acceptance of the provisions of said ordinance by the incorporated cemetery company, to whom the transfer is requested by said petition, in writing, filed with the borough clerk, the title, management, and control shall thereupon vest in said incorporated cemetery company.[36]

When such acceptance by said incorporated cemetery company is filed with the borough clerk, as herein provided for, he shall thereupon record the same in the book provided for the recording of the ordinances of said borough, and a copy of the record of said ordinance and the acceptance thereof, certified to by the burgess and clerk of said borough, shall thereupon be recorded in the office of the recorder of deeds of the proper county, in the same manner as is now provided for the recording of deeds [37]

1165b. Sale of Lands by Cemetery Companies.

An incorporated cemetery company may sell a portion of its land so long as the proposed sale does not deprive the lot holders of the use of and reasonable access to their lots or interfere with the integrity of the cemetery as a burial place. Such a corporation may sell a part of its land to a Roman Catholic church for burial purposes and such sale is not invalidated by the fact that the church and the cemetery company are each to receive one-half of the proceeds of the sale of lots to the members of the church.[38]

1192. Co-Operative Associations—Business to be Transacted on Cash Basis.

The name of a co-operative association formed under the Act of June 7, 1887, P. L. 365, gives notice to everyone doing business with it, that it is formed under said act, and a party who sells goods to it on credit may not enforce his claim therefor, even though some of the letter and bill heads of the association contain no notice to that effect.[39]

1217. Collection of Assessments by Drainage and Meadow Companies.

The Penn Manor Meadow Company originally chartered by special Act of March 4, 1815, 6 Sm. L. 257, and reincor-

(36) Sec. 2, Act of April 23, 1909, P. L. 155.

(37) Sec. 3, Act of April 23, 1909, P. L. 155.

(38) McDonald *v.* Monongahela Cemetery Co., 226 Pa., 77 (1909); May *v.* Monongahela Cemetery Co., 226 Pa., 84 (1909).

(39) Yeagley *v.* Co-operative Association, 22 York, 116 (1909).

porated under the Act of April 29, 1874, P. L. 73, has no power to levy an assessment upon a person who is not a member of the corporation, whose lands, although a part of the area originally surveyed for protection by the company's works, are not affected by the work for which the assessment was levied.[40]

1221a. Surrender of Charters and Franchises of Meadow Companies —Counties to Perform Functions.

All corporations organized for the purpose of the erecting and maintaining of meadow banks, building sluices, and digging ditches, and generally for the protection of meadow lands from inundations, be and the same are hereby authorized and empowered, at any time after the passage of this act, to surrender the charter and franchises vested in such corporations. And immediately thereupon all of the duties heretofore performed by such companies shall devolve upon the respective cities or counties within which the lands lie which had been theretofore within the jurisdiction of such meadow companies.[41]

1225. Powers of Electric Light Companies—Rates.

Where an electric light company offers to all its customers a yearly contract at a reduced rate over an existing monthly contract, and one of its customers, refusing to sign such yearly contract, continues to take light, he is bound to pay the monthly rate, if it appear that the company did not give the reduced rate to other customers refusing to sign the yearly contract.[42]

An electric light, heat and power company may allow a lower rate for each unit of electric current to customers consuming a certain amount and pledging themselves to deal exclusively with the company for a stated period than it allows to customers consuming a less amount, and who do not bind themselves to take current for any particular length of time.[43]

1230. Municipal Control—Licenses.

Where a borough has by ordinance granted to an electric light company the right to erect poles and string wires along the streets

(40) Louderback *v.* Warner, 37 Pa. Super. Ct., 136 (1909).

(41) Act of June 9, 1911, P. L. 834.

(42) Allegheny County Light Co. *v.* Shady Side Electric Co., 37 Pa. Super. Ct., 79 (1908).

(43) Steinman *v.* Edison Illuminating Company, 43 Pa. Super. Ct., 77 (1910).

within a specified time, the borough cannot afterwards extend the time limit by a mere resolution not presented to the burgess for approval nor recorded and advertised. Such an extension can be effected only by an ordinance. But where the borough has not insisted upon a strict compliance as to time with the ordinance, but has objected only that a proper bond has not been filed, the borough will not be permitted to enforce a forfeiture of the grant on the ground that the company had failed to observe the original time limit. In such a case, it appearing that the company had made continuous efforts in good faith to furnish a satisfactory bond, the court will restrain the borough from removing the poles and wires, but will require the company to execute and deliver a bond within a specified time.[44]

1231. Erection of Electric Light Poles and Wires on Highways.

An electric light company has a charter privilege of extending its wires across a street, and any interference with the use of such wires is an interference with a public right which is superior to any right in abutting owners to extend wires across the same street.[45]

1239. Incorporation Authorized—Powers.

Clause 3 of Section 2 of the Act of April 29, 1874, providing for the incorporation of corporations for "the support of any literary, medical or scientific undertaking, library association, or the promotion of music, painting or other fine arts," is not repealed by the Act of June 14, 1887, P. L. 383.[46]

1267-1336. Insurance Companies.

As stated in the preface, the laws relating to insurance companies were elaborately revised at the Session of 1911 by the passage of numerous and voluminous acts which repealed practically all of the acts given in the above numbered sections in the original work, except that the Act of May 1, 1876, P. L. 53, given in Sections 1267-1315, remains in force as applicable to mutual fire insurance companies only.

As the acts referred to did not take the form of amendments to existing laws, but instead thereof provided a new code of in-

(44) United Elec. Lt. Co. *v.* East Pgh. Borough, 230 Pa., 65 (1911).
(45) Wettengel *v.* Allegheny County Light Co., 223 Pa., 79 (1909).
(46) Arts and Crafts Guild of Phila., 20 D. R., 584 (1911).

surance law, it proved impracticable to give the same under the section numbers and headings used in the second edition of this work in the presentation of the laws previously in force, for which reason the new laws relating to insurance companies are given in this supplement in Section 1932 and following sections.

1267b. Repeal of Acts of May 7, 1889, and July 2, 1895.

The Act of May seventh, Anno Domini one thousand eight hundred and eighty-nine, and the amendment thereto by the Act of July second, Anno Domini one thousand eight hundred and ninety-five, together with all other acts inconsistent herewith, be and the same are hereby repealed.[47-48]

1267c. Authorizing Fire and Marine Insurance Companies to Grant Insurance Against Lightning, Explosions, Etc.

From and after the passage of this act, any fire, or fire and marine, insurance company, organized under a charter heretofore granted by this Commonwealth, or in pursuance of any law relating to the incorporation of insurance companies, shall have the power, in addition to the powers already possessed, to grant insurance against loss or damage caused by lightning, or by explosion of any kind, when fire does not ensue; and also against loss or damage caused by tornadoes, wind-storms, sleet, snow, flood, or cyclones, or by hail; but nothing in this act contained shall be deemed as rendering any such company liable for any such loss or damage, unless liability therefor shall be expressly assumed in a policy of insurance, specially designed to cover such loss or damage, issued by such company, duly signed by its president and secretary, or in a printed rider attached to and made part of a policy of insurance, duly authenticated and issued by such company, in pursuance of the provisions of this act.[49]

1299. Specially Incorporated Companies Subject to the Provisions of the Act of April 4, 1873.

An insurance company incorporated by special act after the adoption of the constitutional amendment of 1857 holds its charter subject to the provisions of the Act of March 21, 1873, P. L. 20, and its supplements.[50]

(47-48) Sec. 3, Act of May 3, 1909, P. L. 405.

(49) Act of April 27, 1909, P. L. 200, amending Sec. 1, Act of May 9, 1889, P. L. 155.

(50) In re Application of Union Nat. Life Ins. Co., 13 Dau. Co. Rep., 96 (1910). Op. Atty. Gen.

1326. Companies to Certify Names of Agents to Insurance Commissioner.

Companies to which certificates of authority are issued, as provided in the preceding section, shall, from time to time, certify to the commissioner the names of agents, who may be either individuals, partnerships, or corporations, appointed by them to solicit risks in this state; and no such agent, either individual, partnership, or corporation, shall transact business until he, they, or it has procured from the commissioner a certificate showing that the company has complied with the requirements of this act, and that the person, either individual, partnership, or corporation, named in said certificate, has been duly appointed its agent: *Provided,* That in case a license is issued to a partnership or corporation, every officer, and every soliciting employee of such partnership or corporation, shall be required to have an individual license, under said act of Assembly, and shall be subject to all penalties and other provisions of said act: *Provided, further,* That as to corporations, this section shall not apply to any which are engaged in any business other than insurance and real estate.[51]

1330. Municipal Control—Licenses.

A township of the second class has no authority to adopt through its supervisors a resolution imposing restrictions and conditions upon the opening of highways for the laying of pipes and the erection of poles by gas and electric companies, and requiring the payment of license fees by all who so occupy the highways.[52]

1373. Surrender of Franchises by Natural Gas Companies for a Portion of Their Territories.

Where a natural gas company organized under the Act of May 29, 1885, through its directors, surrenders its franchises over a portion of the territory occupied by it, without objection by stockholders, creditors or the state, land owners within the territory surrendered who were previously served by the company have no standing to question its action.[53]

(51) Act of March 30, 1911, P. L. 34, amending Sec. 11, Act of April 4, 1873, P. L. 20.

(52) Easttown Township *v.* Merion & Radnor Gas & Electric Co., 35 Pa. C. C., 497 (1908).

(53) Germania Refining Co. *v.* Alum Rock Gas Co., 226 Pa., 433 (1910).

1399. Contracts to Supply Natural Gas.

A natural gas company may not prefer a glass company by entering into a contract to furnish it with sufficient gas for its needs to the exclusion of other glass companies similarly situated, which desire to be furnished with gas, whether such other companies are incorporated and desirous of using gas at the time when the contract was made with the first mentioned company, or whether they became incorporated and desirous of using gas thereafter.[54]

Where a natural gas company, in consideration of a right of way absolutely conveyed, contracts to furnish gas to the grantor at a certain rate, but the duration of such contract is left indefinite, and, years after the execution of the contract, the increased cost of production of gas compels the gas company to increase its rate to other customers, the company may terminate the contract upon a reasonable notice.[55]

1408. Miscellaneous.

A natural gas company may not arbitrarily refuse to serve the public, but to entitle a person to demand the service of gas he must be in the district and along the lines of the company, and a citizen living in the district but not along the company's lines cannot compel it by mandamus to extend its pipe and service under an ordinance passed more than twenty years after the company went into operation in the municipality, when the supply of gas is diminishing and the company is supplying all the customers it can properly serve, such ordinance being unreasonable.[56]

The taking over of a turnpike road by a county does not *ipso facto* terminate a right of way granted by the turnpike company along its road to a natural gas company for gas pipes.[57]

1469. Taxation of Savings Banks.

Banks and savings institutions paying the four mills tax upon the actual value of their shares of stock, surplus and undivided profits, on or before the first day of March in each year, are not

(54) Fairchance Window Glass Company *v.* Star Gas Co., 36 Pa. C. C., 338 (1908).

(55) McCullough-Dalzell Crucible Co. *v.* Philadelphia Company, 223 Pa., 336 (1909).

(56) Beck *v.* Penna. Gas Co., 18 D. R., 245 (1908).

(57) Suburban Rapid Transit St. Ry. Co. *v.* Monongahela Nat. Gas Co., 230 Pa., 109 (1911).

taxable on bonds, mortgages, etc., owned by them in their own right, and the treasurers of Pennsylvania corporations, the obligations of which are owned by such banks or savings institutions, are not required, on the payment of interest on such obligations, so held, to deduct and pay the tax on corporate loans on such obligations.[58]

The bonds, mortgages, etc., owned by banks and savings institutions electing to pay the ten mills tax on the par value of their shares of stock are, however, subject to the tax on personal property and the tax on corporate loans.[59]

1514. Street Railway Companies Required to Carry U. S. Mail.

All street railway corporations, chartered as common carriers under the provisions of the Constitution and laws of this Commonwealth, are hereby required, upon the demand of the Government of the United States, to transport the United States mail at a price to be mutually agreed upon by the corporation and the United States government; and in the event of failure to agree upon a rate of compensation for a period of three months, after notice of such failure by either party, the said corporation or the United States Government may apply to the Railroad Commission, constituted under the provisions of the act of Assembly of May thirty-first, one thousand nine hundred and seven, creating such commission, for hearing and adjustment of the rate of compensation according to the method of procedure set forth in the said act; and the said Railroad Commission shall proceed to determine the rate of compensation in dispute, as in other disputed rate questions, under the provisions of the said act: *Provided however,* That the rate of compensation in all cases shall not be confiscatory, nor less than that paid by the Government of the United States for services under similar conditions of traffic. The finding of the Railroad Commission shall remain in force for the period of one year.[60]

1515. Abandonment of a Portion of the Routes of Street Railway Companies.

A property owner has no standing to object by a bill in equity, filed under the Act of June 19, 1871, P. L. 1360, to the aban-

(58) Com. *v.* Clairton Steel Co., 222 Pa., 293 (1908).

(59) Com. *v.* Clairton Steel Co., 222 Pa., 293 (1908); 11 Dau. Co. Rep., 25.

(60) Act of April 22, 1909, P. L. 114.

donment of a part of the route of a company and the substitution of another route therefor, where the abandonment was made pursuant to the authority of the stockholders and the consent of the townships wherein the chartered route lies, proper returns having been made to the Secretary of the Commonwealth.[61]

1518. May [Not] Connect Tracks With Any Railroad Tracks.

Street passenger railway companies and railroad companies, heretofore and hereafter incorporated, be and they are hereby authorized and empowered to connect their tracks and to interchange their cars, whether passenger or freight, and the continuous movement thereof between and over their said tracks: *Provided,* That the consent of the local authorities of the several cities, boroughs, and townships, through or within which any street passenger railway and any railroad company may desire to exercise the said rights and privileges, or any of them, conferred by this act, shall be first obtained: *And provided further,* That such consent shall be revocable, at the discretion of the said local authorities, after any term of ten years, and may be extended for similar terms, from time to time, on conditions as the then local authorities may impose: *And provided further,* That the motive power used for the hauling of the cars of any railroad company over the tracks of any street railway company shall be the same motive power as that in general use by the street railway company, in the hauling of its own cars over the same tracks: *And provided further,* That such consent and authority may be revoked by said local authorities after a period of ten years from the time of commencement of operations thereunder.[62]

The above provision relates to connections made between the tracks of distinct companies, and not to connections made by one company between two of its own properties.[63]

1520. Right of Eminent Domain Conferred Upon Street Railway Companies—Exercise of Such Right.

Where a street railway company seeks to relocate a portion of its tracks, through the right of eminent domain, it may do so

(61) Hannum *v.* Media, M. A. & C. Elec. Ry. Co., 221 Pa., 454 (1908).

(62) Act of May 6, 1909, P. L. 458. This act repeals Sec. 8 of the Act of June 7, 1901, P. L. 251, prohibiting the connection of street railway tracks with those of railroads. It seems that said section was unconstitutional because its provision was not set forth in the title of the act. Commissioners *v.* Pgh. Rwys. Co., 56 Pitts., 415 (1909).

(63) Baldwin Township *v.* Pgh. Railways Co., 58 Pitts., 199 (1910).

after having secured the consent of the owners of at least fifty-one per centum of the foot-frontage of the street, traveled longitudinally, on the highway in the township, though the consent of the owners of fifty-one per centum of the foot-frontage covered by the relocation at a particular point has not been obtained.[64]

Where a street railway company laid its tracks prior to the passage of the Act of June 1, 1907, along one side of a highway, except at a place where its tracks were deflected to the opposite side of the road because of an injunction obtained by a non-consenting abutting property owner, such company may, after the passage of the said act, relocate its tracks, at the point of deflection, without again obtaining the consent of the owners of fifty-one per centum of the foot-frontage on the road.[65]

A petition by a street railway company for the approval of a bond for taking land under the Act of June 1, 1907, P. L. 368, which does not aver the incorporation of the company nor that it is a company to which said act applies, and fails to state the purpose for which the land is to be taken or fails to set out the necessity for taking a strip greater than forty-five feet in width, or to show a resolution by the corporation proposing to take the particular land sought to be condemned, is fatally defective.[66]

1526. Proceedings When Railway Crosses Private Property.

The provision of the Act of June 1, 1907, P. L. 368, requiring street railway companies exercising the right of eminent domain to fence in their rights of way is unconstitutional, the title of said act not supporting said provision.[67]

1527. Right to Transport All Kinds of Freight and Property Conferred Upon Street Railway Companies.

The right and privilege to transport and carry all kinds of freight and property upon, along, and over all street railways, and to charge and collect a reasonable compensation therefor, is hereby extended to and conferred upon all street railway companies, including every kind of street railway, suburban street railway, or interurban street railway, whether their lines of rail-

(64) Lehman *v.* Chambersburg & Gettysburg Elec. Rwy. Co., 224 Pa., 276 (1909).

(65) Lehman *v.* Chambersburg & Gettysburg Elec. Rwy. Co., 224 Pa., 276 (1909).

(66) York Railway's Company *v.* Stiles, 37 Pa. C. C., 257 (1909). See Section 1604 A.

(67) Kauffman's Petition, 36 Pa. C. C., 17 (1909).

way are to be and are maintained either at the surface or above or below the surface of the earth: *Provided,* That the consent of the local authorities of the several cities, boroughs, and townships, through or within which any street railway company, lessees or operators thereof may desire to exercise the rights and privileges, or any of them, conferred by this act, shall be first obtained: *And provided further,* That said consent and authority may be revoked by said local authorities after a period of ten years from the time of commencement of operations thereunder: *And provided further,* That such consent shall be revocable, at the discretion of the said local authorities, after any term of ten years, and may be extended for similar terms, from time to time, on conditions as the then local authorities may impose.[68]

1549. Municipalities May Contract With Surface, Elevated, Underground or Motor Power Companies to Fix and Regulate the Powers and Duties of the Contracting Parties.

The Act of April 15, 1907, P. L. 80, authorizing municipalities to contract with street railway companies, does not violate Section 7 of Article IX of the Constitution of Pennsylvania, which forbids the General Assembly to authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual, and the General Assembly may empower a municipality to contract for the payment to it by a street railway company or motor power company of fixed sums in place of the performance of certain duties or of the payment of license fees or charges imposed by general law or ordinance, or by the charter of a leasing or operating company, and in making such a contract a municipality may provide for its own protection that it may select a certain number of the directors of the company.[69]

1528. Regulation of Maximum Rate of Fare to be Charged by Street Railway Companies in Cities of the Second Class.

The Act of June 7, 1907, P. L. 453, regulating the maximum rate of fare to be charged in cities of the second class, is unconstitutional as local or special legislation.[70]

(68) Sec. 1, Act of May 6, 1909, P. L. 457.

(69) Brode *v.* Philadelphia, 230 Pa., 434 (1911).

(70) Ashworth *v.* Pittsburgh Railways Company, 231 Pa., 539, reversing Same Title, 44 Pa. Super. Ct., 326 (1910), and 17 D. R., 128 (1909).

1585. Municipal Consent to the Construction and Operation of Street Railways.

A street railway company authorized by a municipality to operate its own line on certain streets may not grant to another company the right and franchise to operate within the city, and use its tracks, without municipal consent; and a street railway company which has lost municipal consent, through its failure to perform certain conditions prescribed in the ordinance granting consent, may not operate its cars on the tracks of another company without municipal consent, although with the consent of such other company. Consent is required by the 9th Section of the 17th Article of the Constitution not only for the construction of street railways but also for the operation of their lines.[71]

In granting to a street railway, by ordinance, the right to construct and operate upon a certain street, a borough may reserve to itself the right to tear up the tracks laid thereon if the railway is not built within one year from the approval of the ordinance, and if not so built, and if there be no evidence of impossibility or hardship which would constitute a proper excuse for the delay, the borough may remove the tracks; and indulgence and delay in instituting proceedings will not constitute laches on its part, if there be no change in the situation prejudicial to the company. A mere statement by the borough solicitor and a member of the borough council that the purpose of the action of the borough was to compel the company to pave its tracks, will not defeat the right of the borough to remove such tracks.[72]

1586. Conditional Municipal Consents.

A township gave a street railway company the right to lay its tracks on a road upon condition that the company would pave between the tracks, keep the pavement in repair, and, upon the establishment of a certain foundry, double track the line. The foundry was established but the double track was not laid, and the street was allowed to become badly out of repair. Held, that the agreement was valid and would be specifically enforced in equity.[73]

(71) Erie *v.* Erie Traction Co., 222 Pa., 43 (1908).

(72) Spring City *v.* Montgomery & Chester Elec. Ry. Co., 35 Pa. Super Ct., 533 (1908).

(73) Patton Township *v.* Monongahela Railway Co., 56 Pitts., 418 (1907).

A lower court has held that where a municipality in granting a franchise to a street railway company imposes a condition, which as independent legislation it had no statutory authority to impose, such as fixing the rate of fare and the times for running cars, such condition is not legislation but part of a contract which requires acceptance by the street railway, and without such acceptance may not be enforced.[74]

Where a street railway has a franchise to operate on certain streets, subject to certain conditions, a lessee of the company cannot take any part of the system of the lessor company relieved from such conditions.[74*]

1586a. Forfeitures for Failure to Comply with the Conditions of Municipal Consents.

Where a street railroad company agrees, in accordance with the terms of a city ordinance, to commence the construction of a street railway by a certain date and to complete and operate same as an entirety upon all the streets named in the ordinance within a stipulated time, and furnishes a bond for $25,000, conditioned to comply with the ordinance and to indemnify the city from loss or damages arising from breach, and agreeing "that the said bond shall become forfeited to and collectible by the city as assessed and liquidated damages due and owing said city in event of failure of the company to complete and operate its line of railway within the time stated; for which bond, after the company shall have completed and begun to operate its railway line, shall be substituted the bond of the company in the sum of $5,000," the city is entitled to collect $25,000 on the bond as liquidated damages in case of failure to complete and operate the railway within the stipulated time.[75]

In such case, if the railway company desires to plead an excuse for its failure to complete and operate its line within the time limit, the burden is upon it to show that the matter relied upon actually caused or contributed to its failure. A temporary delay, from no matter what source, would not serve to relieve the company from its contractual obligations, if, as a matter of fact, it did not cause or contribute to the ultimate failure to comply with the ordinance.[76]

(74) Easton City *v.* Easton Transit Co., 12 North., 93 (1909).
(74*) Reading *v.* United Traction Company, 3 Berks, 245 (1911).
(75) York *v.* York Railways Company, 229 Pa., 237.
(76) York *v.* York Railways Company, 229 Pa., 237.

In such case, also, the fact that the city stood by and saw work done on the line after the expiration of the time limit, required the company to expend money in paving a street and accepted a percentage of the gross earnings on the tracks laid as stipulated in the ordinance, does not estop the city from collecting the amount stipulated as liquidated damages for default in not completing and operating the line on time, there being nothing upon the record to show that the city claimed a forfeiture of the franchise or raised any question as to the right of the company to use the part of the line that it had completed and was paying the percentage upon.[77]

1590. Rights of Owners of Property Abutting on Streets and Highways Occupied by Street Railways.[78]

Where a borough ordinance gives a street railway company the right to use a street, together "with the right to construct such switches, curves, crossovers, and turnouts as are necessary in the operation of its railway," without any grant of a right to use a side walk, and such company undertakes to make a cut two or three feet in length below the established grade on the property of the abutting owner and extending into such property, used as a sidewalk, several feet, said owner has a standing to maintain a bill in equity to restrain the company from so doing.[79]

The consent of the abutting owners of fifty-one per cent. of the foot frontage upon a highway is not necessary under the provisions of the Act of June 1, 1907, P. L. 368, where the line of a relocated street railway merely crosses such highway.[80]

1590a. Obstruction of Street Railway Tracks.

Where a street railway company secured from the owner in possession of land its right of way, paid for the same and constructed and operated its line to the convenience of a large portion of the community with the tacit assent of the defendant, the successor in title of the original owner of the land, an injunction will issue to restrain said defendant from interfering with the operation of the road in pursuance of threats to obstruct the tracks if settlement was not made for damages claimed to have

(77) York *v.* York Railways Company, 229 Pa., 237.

(78) See Sec. 1520.

(79) Breen *v.* Pittsburgh, Harmony, B. & N. C. Rwy. Co., 220 Pa., 612 (1908).

(80) Economy Improvement Company *v.* Woodlawn Electric St. Co., 19 D. R., 491 (1909).

been sustained by the defendant, antedating the acquisition of the right of way by the railway company, the injuries, if any, suffered by the defendant being capable of full compensation in damages.[81]

A street railway company in actual possession and operation of its line, regularly serving large public interests, may enjoin the forcible obstruction of its tracks though the title to its right of way be claimed by those causing such obstruction.[82]

The Act of March 31, 1860, Section 142, P. L. 382, making the wilfull obstruction of a railroad a felony applies to street railways.[83]

1596. Occupancy of Bridges by Street Railways.

The first section of the Act of May 11, 1909, P. L. 506, provides that the several counties of the Commonwealth may, whenever the commissioners thereof, or the majority of them, shall by resolution duly adopted deem it expedient so to do, and approval thereof by a grand jury and the court of quarter sessions, construct public highways, bridges or tunnels or underground roads within cities, or in and between cities, townships and boroughs, which bridges or tunnels shall forever thereafter be county property and maintained by the county.

The 12th Section of the said act provides as follows:

The said county commissioners or a majority of them, of the several counties of this Commonwealth, are hereby authorized and empowered to make and enter into a contract or lease with any street railway or transportation company, its successors and assigns, for the concurrent use of such a portion of said public highway, bridge or tunnel as shall not substantially impair or restrict the public use and enjoyment thereof, upon such terms and conditions as shall be agreed upon: *Provided however,* That no such contract or lease for the concurrent use of a portion of such improvement shall be for a longer term or period than twenty years: *And provided further,* That no contract or lease shall be made or entered into by the said county commissioners, or a majority thereof, affecting the public use and enjoyment or any part thereof, except upon and after any such contract or lease has been

(81) Penna. & Maryland St. Ry. Co. *v.* Kenneth Coal Co., 20 D. R., 496; 38 Pa. C. C., 381.

(82) Penna. & Maryland St. Ry. Co. *v.* Kenneth Coal Co., 20 D. R., 496; 38 Pa. C. C., 381.

(83) Penna. & Maryland St. Ry Co. *v.* Kenneth Coal Co., 20 D. R., 496; 38 Pa. C. C., 381.

duly approved by the court of quarter sessions of the proper county.

The Act of June 15, 1911, P. L. 987, empowers townships of the first class to locate and build bridges to be used as public highways over railroads, rivers, creeks, streams and private property, whether the said bridges be wholly within or partly without and partly within the township limits.

The 4th Section of said act provides as follows:

The said township shall also have the power to enter into and unite in a contract or contracts with the county commissioners of the proper county, and also with railroads, street railways and other companies and parties interested, or with any or all of them for the building, construction and maintenance of said viaduct or bridges, or for certain parts or portions thereof, and for the payment of any damages caused by the location and the said erection.

Section 6 provides that the contracts for the erection of such bridges may stipulate that the respective township, county, railroad company, street railway or other company or parties interested shall pay a certain part or portion of the whole contract price or cost of the work including damages.

Section 7 provides as follows:

Before any railroad which has not contributed to the payment of the cost of construction of said viaduct or bridge shall be permitted to run its line or lines of tracks under or upon said bridge or viaduct, it shall enter into a contract with the said township to thereafter pay a reasonable amount, part or portion towards the keeping up and maintaining of the said structure, which amount shall be at the same rate, on the same basis as is paid by the railroad companies.

Where a disagreement arises about the compensation to be paid a bridge company for the future occupancy of a bridge by a street railway company, a bill in equity filed by the railway company asking that the bridge company be restrained from interfering with the operation of its cars and praying the court to fix the compensation to be paid, is a proper proceeding, and a decree may be entered therein fixing such compensation for a term of years with a provision for modifying the decree for proper cause on the application of either party.[84]

(84) Point Bridge Company *v.* Pitts. & West End Ry. Co., 230 Pa., 289 (1911).

In such case, where the city in which the bridge is located acquires control of the stock of the bridge company and opens the bridge to the general public, whereupon the railway company declines to make further payments, the bridge company may recover in an action at law against the railway company the amount due under the terms of the decree.[85]

In such case, also, the purchase of the entire stock of the bridge company by the city does not dissolve the corporation nor vest the title to the property of the company in the city, nor prevent the company from collecting compensation for the use of the bridge from the trolley company under arrangements theretofore existing, although the bridge is made free to other travel.[86]

A court of equity has no jurisdiction to enforce the collection of tolls by a bridge company from a street railway company possessing the charter right to use the bridge of the bridge company, merely because a decree had been entered fourteen years before at the instance of the bridge company fixing a certain rate of tolls to be paid by the railway company for a period of five years. Such tolls in arrears may be collected only in an action at law.[87]

A street railway operating street cars upon a county bridge enjoys a special use different in kind and extent from that enjoyed by the general public and may be required to pay rental for such use, and where a county condemns certain bridges in use by a street railway company under agreement with the private owners, and after the condemnation the company contracts with the county commissioners for the use of the bridges and the compensation therefor for a period of years, and after the expiration of said period the company continues to operate on the bridges, but refuses to make further payments to the county, the county may recover from the company for the use of the bridges during this latter period.[88]

In an action by a county against a street railway company to recover compensation for the use of county bridges, where there is evidence showing defendant's lines and the population of the

(85) Point Bridge Company *v.* Pitts. & West End Ry. Co., 230 Pa., 289 (1911).

(86) Point Bridge Company *v.* Pitts. & West End Ry. Co., 230 Pa., 289 (1911).

(87) Pittsburgh & West End Street Railway Co. *v.* Point Bridge Co., 223 Pa., 133 (1909).

(88) Beaver County *v.* Beaver Valley Traction Company, 229 Pa., 565 (1911).

territory in which they lie, the cost of the several bridges to the county and the present value, the amount paid for repairs and costs of maintenance, the sizes and construction of the bridges, details as to the use made of the bridges by the defendant and some evidence as to the general public use as compared with the general use of the defendant, it is not error for the court to allow the jury to determine upon all the evidence what is a fair compensation for the use of the bridge.[89]

1598. Crossings of Railway Tracks.

The Act of June 19, 1871, P. L. 1360, is in effect a mandate to the courts to prohibit grade crossings, unless it is impracticable to avoid them. In determining whether a grade crossing of a railroad by a street railway shall be allowed, therefore, the question involved is not as to the comparative danger of an overhead and a grade crossing, nor the extent of the danger resulting from the latter, but whether it is reasonably practicable to avoid a grade crossing. The extent to which the risk from a grade crossing may be reduced by the exercise of care, and the cost of constructing an overhead crossing, are not elements which enter into the determination of the question.[90]

1599. Requirements as to Paving, Repairing, Etc., of Streets by Street Railway Companies.

Where a city by various ordinances granting consent to different street railway companies to use streets, provides that in case a single track is laid the company must, both as to original paving or subsequent repair, pave and repave the space between the tracks and an additional width of two feet outside of each rail, while in case of double tracks the company must originally pave the space between the two tracks, between the rails of each track and two feet outside of the rails and keep in repair the whole street from curb to curb, a company which changes its line from a double track to a single track will not be obliged thereafter to repave from curb to curb, where the ordinance authorizing the change provides that the single track substituted for the double track shall be "subject to all of the provisions of existing

(89) Beaver County *v.* Beaver Valley Traction Company, 229 Pa., 565 (1911).

(90) Del., Lack. & W. R. R. Co. *v.* Danville & Bloomsburg Street Railway Co., 221 Pa., 149 (1908).

ordinances in respect to single track railways on the streets of this city."[91]

1604. Extensions and Branches.

A street railway company may use the tracks of another company for a short distance under an agreement with such company to connect its main line and proposed extension or branches. Such a company may not construct, maintain and operate on any street already occupied by the tracks of a railway, but the prohibition is limited, in case of branches and extensions, merely to the construction on any street on which the track of another company has been laid. Hence, if a company, in order to connect its main line with an extension, secures from an older company the right to use a portion of the latter's line, it does not act in violation of law.[92]

1604a. Relocation of Lines of Street Railways.

Under the provisions of the Act of June 1, 1907, P. L. 368, it is not necessary for the board of directors of a street railway to formally adopt a resolution instructing the company's engineer to survey a relocation of its line. The act does not seem to contemplate a preliminary survey of a center line, but corporate action in some form is necessary in order to affect private property by a location or relocation of a street car line, at least to such an extent as is necessary to show what lands of individuals it is proposed to take and occupy.[93]

Where the relocated line was surveyed by the engineer of the company, his survey returned, the line adopted as the relocated line of the company and a bond was filed and approved as required by the act, held, that the company's right of entry was complete.[94]

1605. Side Tracks—Switches—Turnouts, Etc.

Where the owner of land abutting on a highway consents to the occupancy of the road by a street railway and permits the company

(91) Allentown *v.* Lehigh Valley Transit Co., 39 Pa. Super. Ct., 529 (1909).

(92) Hannum *v.* Media, M. A. & C. Elec. Ry. Co., 221 Pa., 454 (1908).

(93) Economy Impt. Co. *v.* Woodlawn Elec. St. Ry. Co., 19 D. R. 491 (1909).

(94) Economy Impt. Co. *v.* Woodlawn Elec. St. Ry. Co., 19 D. R., 491 (1909).

to occupy and extend its line of railway, with the necessary turnouts, and operate the same along said road, the company does not exhaust its license by building a switch two hundred and fifty feet long, if it appear that the construction of a longer siding is not unreasonable under the circumstances and is required by the needs of the community. Such a permission on the part of the owner is irrevocable after the construction of the railway.[95]

1609. Leases and Consolidations of Street Railway Companies.

A street railway company had under lease a railroad, the right of way of which extended between two of the branch roads of the railway company, which company wished to connect said branches, and for that purpose proposed to use a short right of way of the railroad company over a township highway. The land of which this highway was a part had belonged to the railroad company and had been laid out by it into a plan of lots, and one of the streets of the plan had been made subject to the easement of the tracks of the railroad. The street subsequently became part of the township road. The commissioners of the township filed a bill praying that the railway company be restrained from using the easement of the railroad company on said road because their consent had not been given. Held, that the case did not call for the issuance of a preliminary injunction and that the one issued should be dissolved.[96]

1612. Mechanics' Liens.

The power house of an electric street railway company is not subject to a mechanics' lien under the Act of June 4, 1901, P. L. 431.[97]

1618. Fares.[97*]

A street passenger railway company operating a belt line exclusively within the limits of a city may designate a certain point of the line as the end thereof, beyond which a passenger may not ride without paying an additional fare. Such a company has the right to define by a reasonable regulation the length of trip to which a passenger is entitled for his fare, and the question wheth-

(95) Taylor *v.* Erie St. Pass. Ry. Co., 37 Pa. Super. Ct., 292 (1908).

(96) Commissioners *v.* Pgh. Railways Co., 56 Pitts., 415 (1909).

(97) Vulcanite Paving Co. *v.* Phila. Rapid Transit Co., 220 Pa., 603 (1908).

(97*) See Section 1528.

er such regulation is reasonable is one for the court and not for the jury.[98]

In the absence of express statutory authority a municipality may not enact an ordinance requiring a street railway to give transfers on all connecting or intersecting lines and providing for a penalty for failure to do so. Section 3 of Article XX of the Act of March 7, 1901, P. L. 20, relating to cities of the second class, and providing that such cities shall have the right to establish stands for coaches, cabs, etc., and other vehicles for hire, and fix the rate for transportation, does not grant authority to regulate the rates of fare and transfers of street passenger railways.[99]

Where a contract between a city and a street railway company provided "that the present rates of fare may be changed from time to time, but only with the consent of both parties hereto," and it appears that at the date of the contract the company charged five cents for a continuous ride, sold tickets in strips at the rate of six for twenty-five cents and gave free transfers at certain intersections, issued both on cash fares and on tickets, the company does not violate the terms of the contract by discontinuing the sale of the strip tickets without the consent of the city.[100]

Where a contract between a city and a street railway company was as above stated, and the "present rates of fare" were five cents for a continuous ride, or tickets sold in strips at the rate of six for twenty-five cents, and free transfers at certain intersections, issued both on cash fares and tickets, the company does not violate the terms of the contract by changing its rule so as to issue free transfers only to persons who pay a cash fare of five cents and not to those who pay their fare by ticket.[1]

1620. Miscellaneous.

A street railway having the franchise to operate its railway on the streets of a city may operate not only its own cars but also cars which it leases from another company.[2]

(98) Com. *v.* Doe, 44 Pa. Super. Ct., 331 (1910).

(99) Pittsburgh *v.* Pittsburgh Railways Co., 20 D. R., 409 (1910): Pittsburgh Railways Co. *v.* Alexander, 20 D. R., 413 (1910).

(100) Philadelphia *v.* Phila. Rapid Transit Co., 228 Pa., 325 (1910).

(1) Philadelphia *v.* Phila. Rapid Transit Co., 224 Pa., 544 (1909).

(2) Pittsburgh *v.* Pitts. & Charleroi St. Ry. Co., 230 Pa., 189 (1911); 57 Pitts., 407 (1909).

1628. Operation in Municipalities—Location of Poles and Wires.

Under the Act of April 22, 1905, P. L. 294, a telephone company may construct lines upon any of the public roads and streets of a borough, subject to municipal regulations, provided the construction will not incommode the public use of such streets, but the consent or acquiescence of a borough in the location and maintenance of certain telephone poles will not preclude it from afterwards adopting reasonable regulations as to other poles. Where a telephone company has complied with the prescribed regulations, the borough will be enjoined from interfering with the erection of poles.[3]

Where a telephone company applies to a municipality for permission to erect a pole upon a sidewalk at a point definitely indicated in the application as being located a certain number of feet from the intersection of two streets, and a license is granted by councils in accordance with the Act of June 25, 1885, P. L. 164, the company will be restrained from placing the pole at a different place.[3*]

Where a telephone company has erected its poles upon the streets of a municipality in pursuance of a city ordinance, and has rendered service to the city for eight years, and fixed its price and regulated its business in accordance with the ordinance, an injunction will issue to restrain the city from removing the poles and replacing the wires underground.[4]

The right of a telephone and telegraph company to maintain its wires and cables, lawfully constructed on a borough street, under the provisions of the Acts of June 25, 1885, P. L. 164; May 1, 1876, P. L. 90, and April 22, 1905, P. L. 294, is superior to the right of a citizen of the borough to use the street to remove a building under a license from the borough authorities. Hence, such company will not be required to raise its wires or cables at its own expense to such a height as to permit him to move a building under them, but he may do so upon payment of its reasonable charges for raising them and readjusting them afterwards.[5]

(3) Central Dist. Printing & Teleg. Co. *v.* Freedom Borough, 20 D. R., 243 (1910); 58 Pitts., 303.

(3*) Wilson *v.* Bell Telephone Company of Penna., 3 Berks, 263 (1911).

(4) Consolidated Teleph. Companies of Penna. *v.* Wilkes-Barre, 17 D. R., 487 (1907).

(5) Central Dist. & Printing Teleg. Co. *v.* Davis, 17 D. R., 1036 (1909).

1632. May Connect with Other Lines.

A clause in the contract between two telephone companies which binds one of the companies not to connect with any telephone system not covered by the contract, violates the policy of the state that public service corporations shall not discriminate in their service or charges and shall connect and exchange business with all similar companies.[6]

1636. Erecting Poles on Highways.

It seems that a telephone company may construct its line of poles and wires upon a public road without first obtaining the consent of an abutting property owner, and a preliminary injunction against such construction will be continued only in case the plaintiff satisfies the court that there is immediate and urgent danger of irreparable injury if the injunction is not continued.[7]

1647. Recovery of Damages to Trees Along Highways, Etc.

The owner of real estate which is in exclusive possession of a tenant may maintain an action of trespass against a telephone company for an injury to his reversion such as the destruction of trees.[8]

1660. Corporations not to be Formed With the Word "Trust" as Part of Their Name Unless Under the Supervision of the Commissioner of Banking.

No corporation shall be hereafter chartered, under the laws of this commonwealth, with the word "trust" as part of its name, except corporations under the supervision of the Commissioner of Banking; nor shall any corporate name be so amended as to include the word "trust" unless the corporation be under such supervision.[9]

No person, copartnership, limited copartnership, or corporation, except only corporations reporting to, and under supervision of, the Commissioner of Banking of this commonwealth, or reporting to and under supervision of the Commissioner of Banking of some other state or commonwealth, shall, in this commonwealth, adver-

(6) Consol. Telephone Companies of Pa. *v.* Slate Belt Telephone & Telegraph Companies, and Bell Telephone Company of Pa., 13 Dau. Co. Rep., 86 (1909). Ruling of Pa. R. R. Com.

(7) Koehler *v.* Bell Telephone Company of Phila., 19 D. R., 613 (1909).

(8) Logan *v.* Penna. Telephone Co. (No. 1), 40 Pa. Super. Ct., 644 (1911).

(9) Sec. 1, Act of April 22, 1909, P. L. 121.

tise or put forth any sign as a trust company, or use the word "trust" as part of its name or title: *Provided always,* That this act shall not be held to prevent any individual, as such, from acting in any trust capacity as heretofore. Any violation of any provision of this section shall constitute a misdemeanor, and, on conviction thereof, the offender shall be sentenced to pay a fine of not exceeding five hundred dollars for each offense.[10]

Nothing in this act shall be deemed to authorize any person, copartnership, limited copartnership, or corporation, except such as report and are under the supervision of the Commissioner of Banking of this commonwealth, in this commonwealth, to solicit or receive deposits.[11]

1690. How Distribution of Assets of Trust Companies to be Made.

The Act of May 8, 1907, P. L. 192, giving a preference to depositors over other creditors in the distribution of the assets of insolvent trust companies is not retroactive, and does not apply to creditors whose rights accrued by assignments for creditors of such companies made prior to the passage of the act when no such preference existed.[12]

The Acts of April 26, 1844, P. L. 419, April 16, 1850, P. L. 477, and May 13, 1876, P. L. 161, giving a preference to depositors in banks of issue and of discount and deposit, do not apply to trust companies expressly denied by statute the right to engage in the banking business.[13]

1691. Liability of Stockholders of Trust Companies.

The Act of May 11, 1874, P. L. 135, imposing a double liability on stockholders in banks and savings fund institutions, trust companies, etc., does not apply to trust companies incorporated under the Act of April 29, 1874, and its supplements, but only to such trust companies as were created by special acts, prior to the adoption of the Constitution of 1874, with the right to engage in the banking business. The stockholders of trust companies incorporated under the Act of 1874 and its supplements are not subject to a double liability.[14]

(10) Sec. 2, Act of April 22, 1909, P. L. 121.
(11) Sec. 3, Act of April 22, 1909, P. L. 121.
(12) Prudential Trust Company's Assignment, 223 Pa., 409 (1909).
(13) Prudential Trust Company's Assignment, 223 Pa., 409 (1909).
(14) DeHaven *v.* Pratt, 223 Pa., 633 (1909); DeHaven *v.* O'Rourke et al., 17 D. R., 445 (1908); Rathfon *v.* Rhoads, 27 Lanc., 345 (1910).

1717. Exceptions to Report and Proceedings Thereon.

Exceptions may be filed within thirty days from the time the report is filed. If the exceptions filed are withdrawn or dismissed, and the report is not referred back to the jury or set aside, it is then to be marked confirmed *nisi*, which is equivalent to the approval referred to in Section 8 (Section 1719, *infra*). Another thirty days is then given to allow time for an appeal to the common pleas, and if no appeal be taken within that period the report is to be finally confirmed or disapproved at the end thereof. If an appeal be taken, then the final confirmation may not take place until thirty days after the result of the appeal is remitted from the common pleas and filed in the quarter sessions. If no exceptions are filed or appeal taken to the common pleas within the times fixed by the act, the court may of its own motion confirm or dismiss the report.[15]

1738. Maintenance of Turnpikes After Condemnation.

Sections one and two of an act approved the tenth day of May, Anno Domini one thousand nine hundred and nine, entitled "An act to provide for the repair and maintenance, or improvement, by the proper township, city, or borough, of turnpikes heretofore or hereafter appropriated or condemned; or when any turnpike company or association has heretofore abandoned or may hereafter abandon its turnpike, or any part thereof; or when any turnpike company or association, owning any turnpike, has heretofore been dissolved or may hereafter be dissolved by proceedings under any existing laws of this Commonwealth," are hereby repealed.[16]

The Acts of April 20, 1905, P. L. 237, and April 25, 1907, P. L. 104, providing for the maintenance of turnpikes owned by dissolved corporations were constitutional.[17]

1770. Taking of Lands by Water Companies—Eminent Domain.

A water company incorporated under the 9th Clause of Section 2 of the Act of April 29, 1874, as amended by the Act of May

(15) Chestnut Hill & Springhouse Twp. Rd. Co. *v.* Montgomery County, 228 Pa., 1 (1910).

(16) Act of March 15, 1911, P. L. 21.

(17) Clarion County *v.* Clarion Township, 222 Pa., 350 (1908); 36 Pa. Super. Ct., 302; Com. *v.* Bowman, 35 Pa. Super. Ct., 410 (1908). Contra, Com. *v.* Bedford Co. Com'rs, 16 D. R., 353 (1907); Haines Twp. Supervisors *v.* Centre Co. Comr's, 16 D. R., 659 (1907).

16, 1889, P. L. 226, for the supply, storage or transportation of water and water power for commercial and manufacturing purposes, has the right of eminent domain, and the fact that the principal consumer of the water supplied by the company will be a railroad company, and that owing to the nature of the country there will be few, if any, other consumers, is immaterial as to the question of public use.[18]

Where a bill in equity was filed to restrain a water company from exercising the right of eminent domain on the ground that it was a corporation for private use merely, and it appeared to the satisfaction of the court that the defendant was a public service corporation, a preliminary injunction was properly refused.[19]

1771. Streams, Rivers and Waters and the Lands Covered Thereby not to be Appropriated Under the Right of Eminent Domain.

The words "waters of the commonwealth" as used in the Act of April 13, 1905, P. L. 152, refer to all waters within the Commonwealth, whether flowing over lands owned by the state or over those owned by private owners.[20]

1775. Reconstruction of Public Roads Overflowed by Water Companies.

Corporations formed for the storage, transportation and supply of water and water power for commercial and manufacturing purposes have the right of eminent domain, and must, under the provisions of the Act of May 26, 1893, P. L. 158, whenever they occupy or flood any part of a public road, reconstruct such road at their own expense.[21]

1777. Territory Through Which Water Companies May Supply Water.

A riparian owner on a stream from which a water company takes some of its supply has no standing under the Act of June

(18) Jacobs *v.* Clear View Water Supply Co., 220 Pa., 388 (1908).

(19) Eastman *v.* Trotter Water Co., 222 Pa., 355 (1908).

(20) In re Bushkill Water Co., 18 D. R., 360 (1909). It will be noted that the syllabus of this case, which states that a water company incorporated after April 13, 1905, may not condemn lands or water by eminent domain is erroneous, the decision being confined to the taking of water or land covered by water under the right of eminent domain. Water companies, of course, may condemn lands not covered by water.

(21) Manufacturers' Water Company's Petition, 19 D. R., 728 (1910).

19, 1871, P. L. 1360, to restrain such company from delivering water within the limits of the township to a railroad company, though the railroad company carries the water so received beyond the limits of the township in its own pipes. The remedy in such a case is by a proceeding at the instance of the Commonwealth.[22]

A water company incorporated under the Act of 1874 to supply water to residents of a village and territory adjacent thereto, may supply water to residents of a district within the township in which the village is located made up of the village and adjacent territory.[22*]

1786. Exclusive Privileges.

A water company incorporated prior to the passage of the Act of June 2, 1887, which has paid dividends at the rate of ten per cent. per annum for twenty years, has no exclusive privilege to supply water in a borough.[23]

1788. Right of Boroughs and Municipalities to Erect Water Works.

Where a water company lays its pipes in the streets of a borough without the permission of the borough, and without any contract with it at the time, and several years thereafter agrees to furnish water for fire purposes alone, but without new construction, for a fixed period merely, and without any liability for failure or neglect to provide the supply, and thereafter the borough, by a change in its charter, acquires the right to construct water works of its own, which it had not theretofore had, the borough may not be enjoined from the construction of such works.[24]

Where a borough incorporated under the provisions of a special law, with no power to create an indebtedness in excess of $10,000, becomes subject to the general borough law of April 3, 1851, P. L. 320, in proceedings instituted under the Act of June 4, 1901, P. L. 362, it becomes subject to the Act of May 3, 1901, P. L. 140, giving boroughs the right to erect water works for the use of the public.[25]

A borough ordinance granting without limit as to time permission to a water company to enter the borough and lay its pipes

(22) Bland *v.* Tipton Water Co., 222 Pa., 285 (1908).
(22*) Gring *v.* Sinking Spring Water Co., 3 Berks, 215 (1911).
(23) Dorrance *v.* Bristol Borough, 224 Pa., 464 (1909).
(24) Dorrance *v.* Bristol Borough, 224 Pa., 464 (1909).
(25) Dorrance *v.* Bristol Borough, 224 Pa., 464 (1909).

in the streets, when accepted and acted upon by the company, constitutes a contract between the borough and the company to supply water to the public which exhausts the power of the municipality to supply it with water, and prevents the borough from erecting its own water works for that purpose so long as the water company continues to furnish a suitable and adequate supply, *and this applies whether the company has or has not an exclusive privilege.* Such contract is binding on a city which annexes the borough to it as a ward, agreeing to recognize all contracts for the supply of water made by the borough.[26]

Where a water company, without any inducement by the authorities of a borough, enters upon the borough's streets and proceeds to furnish water to the public, and subsequently contracts with the borough to furnish water for municipal purposes, and agrees, in consideration for the privilege of supplying such water, not to charge the inhabitants of the borough higher rates than those it had theretofore been charging, the borough is not precluded by such a contract from subsequently itself furnishing water to its inhabitants.[27]

Where a water company erects its plant and proceeds to supply water to a particular territory, and thereafter, when a borough its erected out of a portion of such territory, continues to supply the inhabitants of the borough with water and supplies the borough with water for fire protection at fixed rates, and, with the growth of the borough extends its mains and builds additional fire hydrants at the request of the borough, such company may not claim that by virtue of any one of these acts, or all of them together, there was an implied contract between it and the borough to supply the latter with water, and that such contract had exhausted the power of the borough to supply water to its citizens by its own plant.[27*]

1789. Appropriation of Water.

Where a water company obtains by condemnation proceedings the right to use all the water of a creek at a certain point flowing over plaintiff's land at the point of appropriation, but does not at once use all such water, plaintiff is not entitled

(26) Pennsylvania Water Co. *v.* Pgh., 226 Pa., 624 (1910).

(27) Tarentum Water Co. *v.* Tarentum Borough, 230 Pa., 148 (1911).

(27*) Bethlehem City Water Co. *v.* Bethlehem Borough, 231 Pa., 454 (1911).

to additional compensation when, later, the company takes all the water for its lawful uses.[27**]

Damages accrued by the taking of water are to be estimated as of the time of taking, and include the amount of water, the right to divert which is taken, irrespective of the amount actually diverted. Where the entire stream is actually appropriated by resolution, and the amount to be taken per day is subsequently limited. and five years thereafter a lower riparian owner, whose property has been injured by the diversion of water, files a petition for the appointment of viewers to determine the damages, the jury may consider only how much the property was reduced in value by reason of the appropriation and withdrawal from the stream of the number of gallons specified in the supplemental resolution.[28]

Where a water company tenders a bond in proceedings to appropriate waters, and such waters are claimed by another water company, the court will pass upon the sufficiency of the bond, there being no objection as to its form or sufficiency, leaving the declaration of the rights of the parties to the proper procedure.[29]

1791. Where the Water Supply is Impure or Insufficient in Quantity.

Owing to an unusually severe drought, the wells wherefrom a water company supplying a borough with water obtained its supply failed, and water was supplied only intermittently. Said company could obtain water from another company, but only at a high rate, though not a grossly unreasonable one. Held, that on a bill to require the company to furnish a sufficient quantity of water a decree should be made requiring it to furnish such sufficient quantity.[30]

"Ordinarily pure and wholesome water naturally means such as is reasonably clean from dirt and discoloration and odors, reasonably clear from bacteria and coli or any other infection or contamination which renders the water unfit for domestic use and unsafe and dangerous to individuals. Modern investigation and scientific attainments demonstrate that water from polluted

(27**) Gring *v.* Sinking Spring Water Co., 3 Berks, 215 (1911).

(28) James *v.* West Chester Borough, 220 Pa., 490 (1908). This case involves the appropriation of water by a borough, but the decision is doubtless applicable to the appropriation of water by a water company formed prior to the passage of the Act of April 13, 1905, P. L., 152.

(29) Harwood Coal Co. *v.* Hazleton Water Co., 15 Luz., 114 (1910).

(30) Gillis *et al v.* East McKeesport Water Co., 56 Pitts., 285 (1909).

sources can by proper filtration be made reasonably safe and pure, and therefore the standard of purity as fixed by the well-recognized authorities must be secured." [31]

Where a company furnishes impure water, containing bacteria and bacilli causing typhoid fever, in a bill in equity against the company a decree will be entered directing the company to secure and provide a sufficient supply of ordinarily and reasonably pure and wholesome water, and further decree that the company shall file a statement within a specified time showing what it proposes to do to comply with the provisions of the decree.[32]

1791a. Purchase of Plants of Water Companies by Municipalities.*

The several cities and boroughs of this Commonwealth, desirous of owning and operating the waterworks, plants, or system for the supplying of water to any such municipality and the inhabitants thereof, which waterworks, plants or system is now, or may hereafter be, owned by a private corporation, firm, or individual, may petition the court of common pleas of the proper county, setting forth that the said municipality is desirous of owning said water plant or system, owned by such corporation, firm or individual, and that it will be necessary, in order to make payments therefor, to issue bonds, secured by such plant or system of waterworks, and that therefore a value should be placed upon such waterworks, plant, or system, including all property, real or personal, used in connection therewith and reasonably necessary for its purposes.[33]

Where a borough proceeds under the above act to acquire the plant of a water company, and the respondent files a disclaimer consenting that the borough may install a plant as if the proceedings had not been prosecuted to completion, and upon this disclaimer the petition of the borough is dismissed, the company may not afterwards, when the borough has expended large sums of money toward the construction of a plant of its own, maintain a bill in equity to prevent the completion of such plant. The validity of the estoppel in such case does not depend upon the constitutionality of said act.[34]

(31) Peffer *v.* Penna. Water Co., 221 Pa., 578 (1908).

(32) Peffer *v.* Penna. Water Co., 221 Pa., 578 (1908).

(*) See Sec. 1792.

(33) Sec. 1, Act of May 31, 1907, P. L., 355.

(34) Clear Springs Water Co. *v.* Catasauqua Borough, 231 Pa., 290 (1911).

1791b. Appointment by Court of Appraisers.

That the said court shall thereupon appoint three disinterested civil engineers as appraisers, to value and appraise such plant or system and the property used in connection therewith and reasonably necessary for its purposes, who shall file their report in the office of the prothonotary of the proper court within three months after their appointment, unless such time be extended by the court.[35]

1791c. Report of Appraisers—Appeal.

The appraisers so appointed shall have full access to the books and records of the private corporation, firm, or individual owning said waterworks or system, to inform themselves as to the income and value thereof. They shall have power to administer oaths, and are hereby authorized to hear and consider the testimony of witnesses and other legal proofs. Their report shall be final, if not appealed from within ten days after notice of the filing thereof shall have been served on the mayor or burgess of the city or borough, and upon the corporation, firm, or individual owning the waterworks. Within said ten days either party may appeal from such appraisement, alleging an under or over valuation of the property thereby, and praying for a hearing before the court; and the said court shall thereupon, upon application of either party, fix a time when said appeal may be heard, of which time at least ten days notice shall be given to the parties; and upon such hearing the court shall have power, after hearing legal proofs and arguments, to increase or lower such appraisement, or otherwise, and modify the same as the facts may warrant, subject, however, to the right of appeal by either party to the proper appellate court, as in other cases in equity.[36]

1791d. Purchase of Plants at Determined Value—Companies Refusing to Sell at Such Value to Lose Exclusive Franchise.

After such value is finally determined, the municipality is authorized to buy said water plant at the valuation so fixed and determined; and the said corporation, firm, or individual, owning same, shall within ten days notice of such determination, and a request by the municipality so to do, file in said court a paper indicating its consent and election to sell and convey its plant, system, and property, so appraised, to the municipality, at the

(35) Sec. 2, Act of May 31, 1907, P. L., 355.
(36) Sec. 3, Act of March 31, 1907, P. L., 355.

valuation fixed as aforesaid; and, in default whereof, such corporation, firm, or individual shall cease to have any exclusive privilege of supplying said municipality, or the citizens thereof, with water, and said municipality may install or cause to be installed such plant or system as the authorities may deem necessary and expedient for the accommodtion of the public.[37]

The above act does not apply to the purchase by a borough of the property of a water company incorporated prior to the passage of the Act of June 27, 1887, P. L. 310, depriving water companies thereafter formed of exclusive privileges, and while the property of such a company formed under the Corporation Act of 1874 may be taken by a municipality in accordance with the provisions of that act, the legislature cannot, by legislation adopted subsequent to the incorporation of the company, provide for the appointment of appraisers to fix a price which the company must accept under penalty of losing its exclusive privileges.[38]

1791e. Issue of Bonds by Municipalities for Purposes of Purchase of Plants.

For the purpose of said purchase, the municipality may issue bonds, which shall be secured solely by such waterworks, system, and property, and the revenues thereof, to an amount not exceeding the appraisement of the value fixed by the said appraisers or the court. The proceeds of the sale of such bonds shall be used exclusively for the purpose of making payment for the property so acquired.[39]

1791f. Sinking Fund.

The municipality shall provide an adequate sinking-fund for the receipts and revenues derived from said waterworks or system, for the payment of the interest on such bonds and for their redemption. The bonds shall be payable within thirty days [years] from the date of their issue, and shall be redeemable at such earlier period as the municipality may, by ordinance, provide, and shall bear interest at a rate to be fixed by the municipality, not exceeding six per cent. per annum. The bonds shall be exempt from taxation for any purpose.[40]

(37) Sec. 4, Act of March 31, 1907, P. L., 355.

(38) Manheim Borough *v.* Manheim Water Company, 229 Pa., 177 (1910); 27 Lanc., 321, 326.

(39) Sec. 5, Act of March 31, 1907, P. L., 355.

(40) Sec. 6, Act of March 31, 1907, P. L., 355.

1791g. Where Method of Appraisement is Fixed by Contract.

Should there be, at the time of the passage of this act, a contract or agreement, in writing, existing between any corporation, firm or individual owning the water plant or system, and a municipality then being supplied with water by such corporation, firm or individual, establishing or adjusting or fixing the manner in which such water plant or system may be appraised, purchased, or acquired, then, and in that case, appraisers shall be selected, and the appraisement made in accordance with the terms of such contract, and [to] the respective parties to such contract shall in lieu of the preceding provisions of this act, carry out the terms of said contract in arriving at the value of said water-plant or system.[41]

1792. Purchase of Plants of Water Companies After Twenty Years.

A proceeding under the Act of April 29, 1874, P. L. 73, providing a means by which a city can compel the conveyance of waterworks by paying the cost of erecting the same with interest thereon at a specified rate, should be by mandamus and not by bill in equity. The same process should be used to compel a gas or water company to disclose its accounts to the officers of the city desiring to purchase the same.[42]

1793a. Water Companies May Lease Their Plants.

A water company incorporated under the Act of April 29, 1874, may lease the property and franchises of another water company and thereby acquire the charter powers of the lessor company.[42*]

1797. Property of Water Companies Subject to be Taken in the Exercise of the Right of Eminent Domain.

Where the property of a water company is condemned by a city, such company is entitled to compensation not only for the physical property taken but also for its franchises, and an order of court in such case is correct which directs the appraisers to

(41) Sec. 7, Act of March 31, 1907, P. L., 355.

(42) City of Williamsport *v.* Williamsport Water Co.; City of Williamsport *v.* The Citizens' Water and Gas Co.; E. D., Jan. Term, 1910, Nos. 316 and 317 (C. P. Lycoming Co., March Term, 1908, Nos. 2 and 3, in Equity). Unreported. Op. filed July 6, 1911.

(42*) Gring *v.* Sinking Spring Water Company, 3 Berks, 215 (1911). See Sec. 233, third paragraph.

appraise the water works and to make a fair valuation of the property, rights and franchises of the company.[43]

Where a city condemns the property of a water company the entire cost of condemnation proceeds is payable by the city.[44]

1798. Municipal Regulation of Water Companies.

Water companies are not required to obtain permission of municipalities to lay pipes in the streets. A borough may subject such corporations to only such police regulations in regard to the streets as will prevent their impairment for public travel. A borough may not annul the charter of a water company by prohibiting it from entering upon and laying pipes in the streets.[45]

A borough ordinance relating to the extension of the works of a water company, incorporated to supply water to a township, which township is afterwards annexed to the borough, is unreasonable and void which provides that "no rights and privileges be granted to said water company to lay pipes and fixtures on any streets, lanes or alleys in said territory until the same are regularly adopted, located and opened by ordinances and graded with the required grade under the rules and regulations of the borough," and the borough will be enjoined from enforcing such ordinance.[46]

Water companies incorporated under the Act of April 29, 1874, exercise their franchises in the streets of a borough subject to the right of the borough to change the grade of the streets in which the pipes of such company are located, and the fact that the borough may have been induced to some extent to adopt a change of grade at the instance of a street railway company will not relieve a water company thereby forced to lower its pipes from its charter obligations.[47]

Where a borough in consideration of its consent to the entry upon its streets of a street railway company, and its authorization of a change in grade of one of such streets, obtains from such company an agreement that it will "bear the entire cost and expense of all changes in the grades, of the macadamizing and

(43) Monongahela Water Company's Case, 223 Pa., 323 (1909).

(44) Monongahela Water Company's Case, 223 Pa., 323 (1909).

(45) Dorrance *v.* Bristol Borough, 224 Pa., 464 (1909).

(46) Mountain Water Company *v.* Emaus Borough, 43 Pa. Super. Ct., 179 (1910).

(47) Springfield Water Company *v.* Phila. & Garretford St. Ry. Co., 45 Pa. Super. Ct., 516 (1911).

repairing of the streets or avenues and shall indemnify the said borough from all damages recovered by property owners for said change of grade," the agreement imposes upon the company only such obligations as are in relief of the borough and its taxpayers, and does not give rise to any obligation on the part of such company upon which a water company maintaining its pipes in such street can claim a right to recover the cost of lowering such pipes occasioned by the change of grade.[48]

1814a. Applications for Extensions of Time Wherein to Complete Works of Water Companies to be Made to Water Supply Commission of Pennsylvania.[49]

Subsequent to the passage of this act any water company or water-power company, heretofore or hereafter incorporated under the laws of this Commonwealth, which shall not have begun the construction of its works within two years after the date of its incorporation, or which shall not have completed the same or placed the same in operation within five years thereafter, may, at any time previous to the expiration of said two years or five years thereafter, make application to the Water Supply Commission of Pennsylvania for an extension of such time, as herein provided. Such application shall be made upon a petition, under the common seal of such corporation and verified by its president or other presiding officer, setting forth the grounds of the application, and that the same is made pursuant to a resolution of the board of directors of said company, at a meeting called for the

(48) Springfield Water Company *v.* Phila. & Garretford St. Ry. Co., 45 Pa. Super. Ct., 516 (1911).

(49) The preamble to this act is as follows:

Whereas, Water and water-power companies incorporated under the laws of the Commonwealth of Pennsylvania are required to begin the construction of their works within two years after the date of their incorporation, and to complete the same within five years thereafter;

Whereas, Water and water-power companies which have not begun their works or completed the same within the time set by law may apply to the court of common pleas for an extension of said time;

Whereas, The general corporation act of one thousand eight hundred and seventy-four and its supplements are indefinite as to the method by which water and water-power companies, which have failed to comply with the requirement of beginning or completing works within the time set by law, shall become defunct;

Whereas, It is decidedly to the best interest of the water-supply of the Commonwealth that the charters of such water and water-power companies be annulled.

purpose,—a duly certified copy of which shall be annexed to said petition. Thereupon it shall be the duty of said commission to hold a hearing upon said petition, at such date as it may decide, and, after due hearing and examination, said commission may approve said petition, subject to such limitations and restrictions as it may see fit, and file in the office of the Secretary of the Commonwealth a duly certified copy of an order setting forth its approval of said application for extension. In the event of the refusal to approve by the Water Supply Commission, appeal may be taken by such company, within ten days thereafter, to the court of common pleas of the county in which said corporation shall have its principal office; whereupon said court shall review the papers in the case, and testimony at the hearing before the Water Supply Commission; and, in the event of said court finding that such company had proceeded with due diligence and good faith, it may order the reversal of the order of the commission, setting forth the limit of such extension of the time granted, and file a copy of such order with the Secretary of the Commonwealth.[50]

1814b. Decree to Issue that Companies are Defunct When.

In the event of the refusal of the Water Supply Commission to approve such petition for extension of time, and if an appeal shall not be taken within ten days thereafter, said commission shall, on the expiration of the said period of two years or five years, issue a decree declaring such company defunct and its charter void, and it shall be stricken from the books of the Secretary of the Commonwealth and the Auditor General.[51]

1814c. Inquiry by Water Supply Commission on its Own Initiative of Status of Charters of Water or Water Power Companies.

The Water Supply Commission of Pennsylvania may on its own initiative, or in response to petition, inquire into the standing of any water or water-power charter; and in such event it may hold a hearing, after due notice to the president or secretary of such company, addressed to the principal office of the company as indicated by its latest report filed with the Auditor General or Secretary of the Commonwealth, to determine whether such company has commenced work on its plant or completed the

(50) Sec. 1, Act of June 15, 1911, P. L., 990.
(51) Sec. 1, Act of June 15, 1911, P. L., 990.

same within the time set by law. If, after due hearing and consideration, said commission shall be of the opinion that such company has not proceeded with due diligence and with *bona fide* intent to fulfill the requirements of law, it may certify the facts in the case to the Attorney General, requesting him to institute *quo warranto* proceedings against said company for the annulment and revocation of its charter: *Provided, however,* That nothing in this act shall be construed to repeal or invalidate, or in any way affect, the provisions of an act of Assembly, approved the twenty-second day of April, one thousand nine hundred and five, entitled, "An act to preserve the purity of the waters of the state for the protection of the public health," or the provisions of an act, approved the twenty-seventh day of April, one thousand nine hundred and five, entitled "An act creating a Department of Health, and defining its powers and duties." [52]

1831. Corporations "For the Transaction of Any Lawful Business."

Clause twenty of second class of corporations, named in section two of the corporation act of one thousand eight hundred and seventy-four, which reads as follows:

"XX. The rechartering of corporations of either of these classes, the charters whereof are about to expire," shall be, and the same is hereby stricken out and repealed; and that there shall be and is hereby substituted in lieu thereof a new clause, which shall read as follows:

"XX. For any lawful purpose not specifically designated by law, as the purpose for which a corporation may be formed." [53]

Any company heretofore incorporated in pursuance of the act, entitled "An act to amend the eighteenth paragraph of the second section of an act, entitled 'An act to provide for the incorporation and regulation of certain corporations, approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four,' so as to authorize the formation of corporations for any lawful purpose not otherwise specifically provided for by act of Assembly," approved the ninth day of July, Anno Domini one thousand nine hundred and one, for any lawful purpose not specifically provided for by any act of Assembly passed prior to the

(52) Sec. 2, Act of June 15, 1911, P. L., 990.

(53) Sec. 1, Act of May 11, 1909, P. L., 515, amending Clause XX, Sec. 2, Act of April 29, 1874, P. L., 73. See Sec. 70.

said last mentioned act, upon accepting the provisions of this act, in writing, under the seal of the corporation, and filed in the office of the Secretary of the Commonwealth, together with a surrender of its letters patent or charter, which shall be filed with such certificate, shall thereupon become and be a body corporate hereunder; and shall be entitled to and be possessed of all the privileges, franchises, and powers as if created under this act; and all the properties, rights, and privileges belonging to said corporation thereunder, acquired by gift, grant, conveyance, assignment, or otherwise, upon said surrender, shall be and the same are hereby ratified, approved, confirmed, and assured to such new corporation with like effect and to all intents and purposes as if the same had been originally acquired by and under authority of this act; and the Governor shall forthwith cause new letters patent, under this act, to issue to such new corporation, under the same name as the company had in the charter under which it was originally incorporated: *And provided,* That any company thus becoming a body corporate in the manner herein provided shall be subject to all the contracts, duties and obligations theretofore resting upon the company whose charter is thus surrendered, or to which the said company shall then be in any way liable: *And provided further,* That any company, upon surrendering its charter and becoming entitled to new letters patent in pursuance of this act, shall have credit for any bonus paid to the Commonwealth by the former corporation; and, also, that before any company, receiving new letters patent in the manner aforesaid, shall engage in or conduct business in pursuance thereof, it shall cause to be recorded, in the office for the recording of deeds in the county in which its principal office or place of business is located, a certified copy of its acceptance of the provisions of this act, as filed in the office of the Secretary of the Commonwealth; and the recorders of deeds of the proper counties are authorized to record the same, in like manner and with like effect as articles of association of companies incorporated under the provisions of the said act of one thousand eight hundred and seventy-four.[54]

The foregoing act was passed, not because there was any doubt that charters granted "for any lawful purpose" under the Act of 1901, were valid, but to enable companies so chartered to so reorganize as to relieve their directors of any special liability to

(54) Sec. 2, Act of May 11, 1909, P. L., 515.

which the directors of corporations formed under the 18th paragraph of corporations of class two, Section 2 of the Act of April 29, 1874, may be subject.

1918a. Operation of Street Railway Companies on Property of the Commonwealth Under the Control of the Pennsylvania Soldiers' Orphan School Commission.

The Pennsylvania Soldiers' Orphan School Commission is hereby authorized and empowered, on behalf of the Commonwealth, to sell and grant to railroad companies, duly incorporated under the laws of this Commonwealth, upon such terms and for such price, and subject to such restrictions and regulations as said commission may deem proper, the privilege to construct, maintain, and operate their lines of railroad over, along, and upon any lands now owned or hereafter to be acquired by the Commonwealth for the purpose of Soldiers' Orphan Schools, whenever in the judgment of the said commission, the interest of the Commonwealth and such Soldiers' Orphan Schools shall be benefitted thereby; and said commission is further hereby authorized and empowered, on behalf of the Commonwealth, to make and deliver such conveyances as may be necessary to vest in such railroad companies the rights of way over, along and upon said lands.[55]

1834. Organization of Corporations for Profit by Executors and Trustees.

A provision in a will authorizing the executors and trustees in the exercise of their discretion to incorporate one or more companies to carry on any business whatever, by the use of any property in their hands, and authorizing them to transfer to such company or companies any property in their care and to receive therefor capital stock for such amounts as they may deem just and proper, applies only to the organization of such corporations as may be necessary or useful in the management and proper development of such properties owned by the testator or in which he was interested as are unproductive and undeveloped; and further provisions authorizing said trustees and executors to distribute the shares of stock of such corporations among the legatees of the estate, as if said shares were converted into money, do not authorize the creation of a corporation to be used merely as a

(55) Act of May 3, 1909, P. L., 400.

holding company for such portions of the stock as remain in the hands of the executors.[56]

1835a. Incorporation of Trustees Under Trusts Created by Bequests or Gifts for the Establishment of Libraries, Museums, Schools, Etc., in Cities.

Whenever any person shall have heretofore made, or hereafter make, any bequests, devises, or gifts, and shall have created, or may hereafter create, in connection therewith, a trust or trusts for the benefit of the people of any incorporated city of this Commonwealth, for the purpose of establishing and maintaining any library, museum, art gallery, school, or other institution for the advancement of learning, science, music or art, or any one or more of said purposes, the terms and conditions and scope of the said trust or trusts being prescribed, and the manner in which the trustees shall be selected or appointed for the administration of said trust or trusts being specified, and providing that officers or representatives of the said city shall be some of said trustees, and if such bequests, devises, or gifts shall have been accepted by the city upon the terms imposed, it shall be lawful to form a corporation, in the manner hereinafter provided, for the management of said trust or trusts, either separately or together, if there be in inconsistence in said trusts, with power to confer degrees in art, pure and applied science, philosophy, literature, painting, music, medicine, law, and theology, or any of them.[57]

1835b. Application for Incorporation.

That, with the consent of the said city, evidenced by a resolution of its councils, the majority of said trustees, named or acting under the provisions of the instrument creating the trust or trusts, may present a petition to the court of common pleas of the county in which said city shall be situate, which shall set forth the terms and provisions and conditions of such trust or trusts, the fact of the acceptance thereof by the city, as evidenced by the proper action of its councils, and, with such petition, the said trustees shall file articles of association, in which articles of association they shall certify:—

1.—The name under which such trust or trusts shall be incorporated.

(56) Kimberly's Estate, 227 Pa., 405 (1910).
(57) Sec. 1, Act of April 26, 1911, P. L., 82.

2.—The purpose for which it is formed (which shall embody the terms and provisions of the trust or trusts).

3.—The kind or kinds of degrees which the corporation shall have power to confer.

4.—The amount of assets in the possession of said subscribers, which are to be devoted to the establishing and conducting of those branches of education in which the corporation shall have power to confer degrees.

5.—The minimum number of persons whom it is intended to regularly employ, as members of the faculty, in each branch of education in which the corporation shall have power to confer degrees.

6.—A brief statement of the requirements for admission, and of the course of study to be pursued in each branch of education in which the corporation shall have power to confer degrees.

7.—The place or places where its business is to be transacted.

8.—The term for which it is to exist.

9.—The names and residences of the trustees, and the manner in which their successors are to be chosen or qualified.

10.—The officers of the said city, and the names of those filling the offices at the time, who *ex virtute officii* are trustees, and the manner of their appointment or selection by the proper body of the city government.

11.—Such other provisions as may be necessary to carry out the intent of the testator or donor.

The practice as to the execution, acknowledgment, and advertisement of said petition and articles of association shall follow the practice provided by the act to which this is a supplement, relating to corporations of the first class.[58]

1835c. Action by Court.

The said petition and articles of association shall be presented to a law judge of the said county, who is hereby required to examine them, and, if they shall be found to be in proper form, and shall appear lawful and not injurious to the community, he shall endorse thereon these facts; and shall thereupon direct the prothonotary or clerk of said court to transmit to the Superintendent of Public Instruction of the Commonwealth a certified copy of said certificate of incorporation, together with the said endorsements thereon.[59]

(58) Sec. 2, Act of April 26, 1911, P. L., 82.
(59) Sec. 3, Act of April 26, 1911, P. L., 82.

1835d. Action by College and University Council.

Upon the receipt of said certified copy of said certificate of incorporation, the said Superintendent of Public Instruction shall, within sixty days thereafter, cause the College and University Council of Pennsylvania to be convened, at such time and place as he may designate; and said council shall thereupon hear and consider said application from an educational standpoint; and if the course of instruction and standard of admission and the composition of the faculty shall appear to said council to be sufficient, and the educational needs of the particular locality in which the proposed institution is to be located and of the Commonwealth at large are likely to be met by the granting of said application, the said council shall thereupon cause to be endorsed upon said petition or certificate its findings and its approval of the same, together with a recommendation to the law judge or court before whom the same was originally presented that the same be granted. If in the judgment of the council the said application should not be granted, it shall endorse thereon its findings and its disapproval of the same, with a recommendation that said application be refused. The said certified copy of said certificate shall, with the endorsements thereon, thereupon be returned by the said Superintendent of Public Instruction to the law judge or court, who, in finally passing upon the petition, shall be guided in his decree by the findings of said College and University Council. In case the law judge, after giving his consideration to the findings of said council, shall be satisfied with the propriety of the application, in view of all the facts, he shall approve the same; and order and decree that upon the recording of said certificate, with the recommendation of said council and a copy of said order of court, in the office of the recorder of deeds, *et cetera,* of the county in which the business of the corporation is to be transacted, the subscribers thereto and their associates and successors shall be a corporation, for the purpose and upon the terms therein stated; and henceforth the persons named therein and subscribing the same, and their associates and successors, shall be a corporation by the name therein given. In case of the disapproval of said application by the council, aforesaid, the proposed charter shall not be granted.[60]

(60) Sec. 4, Act of April 26, 1911, P. L., 82.

1835e. Visitation and Inspection—Revocation of Power to Confer Degrees.

All corporations chartered under the provisions of this act shall be subject to visitation and inspection by representatives of the said council; and if any of them shall fail to keep up the standard recited in its charter, in any of the branches of education in which it has power to confer degrees, the court may, upon the recommendation of the council, revoke the power to confer degrees in that branch or branches of education in which the corporation shall so fail.[61]

1835f. Matters in the Discretion of Court and Council.

Nothing in this act, or in any act of this Commonwealth now in force, shall be construed as fixing an arbitrary standard by which applications for charters under this act shall be measured, either with respect to value of assets, number of faculty, or course of instruction; but such matters shall be within the discretion of the law judge or court to whom petition is presented and the College and University Council.[62]

1835g. Corporate Powers.

Any corporation created under this act shall have perpetual succession, by its corporate name, for the purposes mentioned in its articles; and, in addition to the power to confer degrees, as provided in its articles, shall have general powers as follows: To maintain and defend judicial proceedings, make and use a common seal, and alter the same at pleasure; hold, purchase, sell, and transfer such real and personal property as the purposes of the corporation may require; appoint and remove subordinate officers and agents; to enter into any obligation necessary for the transaction of its affairs, and to make, and, from time to time, alter or amend by-laws for the regulation of its affairs, not inconsistent with its articles of association or the laws of this Commonwealth.[63]

1918b. Operation of Railways on Grounds of Eastern Penna. State Institution for the Feeble-Minded and Epileptic.

The Board of Trustees of the Eastern Pennsylvania State Institution for the Feeble-Minded and Epileptic be, and they are

(61) Sec. 5, Act of April 26, 1911, P. L., 82.
(62) Sec. 6, Act of April 26, 1911, P. L., 82.
(63) Sec. 7, Act of April 26, 1911, P. L., 82.

hereby, authorized, on behalf of and in the name of the Commonwealth, to consent to the location relocation, construction, reconstruction, including the narrowing, elevating, depressing, grading, ornamenting, or improving, of any street railway, electric railway, elevated railway, railway, subway, tunnel, railroad, or other means of travel or transportation, within or upon the lands of the said institution, upon such terms and conditions as the said Board of Trustees may impose for the advantage of the said institution, with the approval of the Governor.[64]

1932. Insurance Department Established.

There is hereby established a department, to be known as the Insurance Department, which shall be charged with the execution of the laws of this Commonwealth in relation to insurance.[65]

1933. Appointment of Insurance Commissioner—Term—Bond—Salary.

There shall be an Insurance Commissioner for the Commonwealth, appointed by the Governor, with the advice and consent of the Senate, who shall hold office for the term of four years from the first Monday of May, until his successor is appointed and qualified. He shall take and subscribe the oath of office prescribed by the Constitution, and file the same in the office of the Secretary of the Commonwealth; and shall give bond, with sureties, in the sum of ten thousand dollars, to be approved by the Secretary of the Commonwealth, for the faithful performance of his duties; and shall receive, in full compensation for his services, an annual salary of seven thousand five hundred dollars.[66]

1934. Deputy Insurance Commissioner—Employees.

The Commissioner shall, with the approval of the Governor, appoint a Deputy Commissioner, who shall perform the duties attached by law to the office of principal during the absence or inability of his principal. The Commissioner may appoint in his department such other employees as he is, from time to time, authorized by law to have: *Provided,* That neither the Commissioner, his deputy, actuary, examiners, nor any other employee,

(64) Act of June 9, 1911, P. L., 862.
(65) Sec. 1, Act of June 1, 1911, P. L., 607.
(66) Sec. 2, Act of June 1, 1911, P. L., 607.

shall be employed by or be pecuniarily interested in any insurance company other than as a policyholder.[67]

1935. Duties of Insurance Commissioner—Examinations—Access to Books—Witnesses.

It shall be the duty of the Insurance Commissioner:—

First.—To see that all the laws of this Commonwealth respecting insurance companies and the agents thereof are faithfully executed; and for that purpose he is hereby given authority to make examinations of insurance companies, home or foreign, whenever he determines it to be necessary or expedient; and also to examine into the affairs of any corporation organized under any law of this Commonwealth, or having an office in this Commonwealth, which corporation is engaged in, or is claiming or advertising that it is engaged in, organizing or receiving subscriptions for or dsposing of stocks of, or in any manner aiding or taking part in the formation or in the business of, an insurance company or companies, either as agents or otherwise, or which is holding the capital stock of one or more insurance companies, for the purpose of controlling the management thereof as voting trustees or otherwise; and, for the purpose of such examinations, he or his deputy, or his examiners, shall have free access to all the books and papers of any such company which relate to its business, and to the books and papers kept by any of its agents, and may summon and administer the oath to, and examine as witnesses, the directors, officers, agents, and trustees of any such company, and any other person, relative to its affairs, transactions, and condition.[68]

1936. Publication of Results of Examinations—Suspension or Revocation of Certificates of Authority.

Second.—He shall publish the result of his examination of the affairs of any company, whenever he deems it for the interest of the policyholders so to do. He shall suspend the entire business of any insurance company of this Commonwealth, and the business within this Commonwealth of any insurance company of another State, or foreign government, during its non-compliance with any provision of law obligatory upon it, or whenever he shall find that its assets are insufficient to justify its continu-

(67) Sec. 3, Act of June 1, 1911, P. L. 607.
(68) Sec. 4, Act of June 1, 1911, P. L., 607.

ance in business, by suspending or revoking its certificate of authority granted by him. If upon examination, or other evidence exhibited to him, he is of opinion that any insurance company, or an officer or agent thereof, has violated any provision of the insurance laws, he shall report the facts to the Attorney General, who, under the direction of the Insurance Commissioner, shall take such legal action as the case may require.[69]

1937. Insolvent or Fraudulently Conducted Companies.

Third.—Whenever the Insurance Commissioner shall find that any insurance company of this Commonwealth is insolvent or fraudulently conducted, or that its assets are not sufficient for carrying on the business of the same, or during any non-compliance with the provisions of this act, he shall communicate the facts to the Attorney General, whose duty it shall be, after hearing, to apply to any court in this Commonwealth having jurisdiction, or in vacation to any of the judges thereof, for an order requiring the company to show cause why its business should not be closed; and the court or judge, as the case may be, shall hear the allegations and proofs of the respective parties, or appoint some suitable person as examiner to perform such duty, and report upon the facts to said court or judge; and if the said court or judge shall find that such company is insolvent, or that the interest of the public so require, the court or judge shall decree a dissolution of the company and a distribution of its effects.[70]

1938. Certificates of Authority.

Fourth.—He shall furnish, when required for evidence in court, certificates, under seal of the department, relative to the authority of a company, agent, or broker to transact business in this Commonwealth upon any particular date, and such certificates shall be competent evidence thereof; and he shall at the request of any person, and on payment of the fee, give certified copies of any charter, statement, or record in his office, whenever he deems it not prejudicial to the public interest.[71]

1939. Records of Commissioner—Annual Report—Seal.

Fifth.—He shall preserve in a permanent form a full record of his proceedings, and a concise statement of the condition of each

(69) Sec. 4, Act of June 1, 1911, P. L., 607.
(70) Sec. 4, Act of June 1, 1911, P. L., 607.
(71) Sec. 4, Act of June 1, 1911, P. L., 607.

company or agency visited or examined. He shall make a report annually, to be submitted to the Legislature at its biennial sessions, showing the receipts and expenses of his department, his official acts, the condition of companies doing business in this Commonwealth, and such other information as will exhibit the affairs of his department. He shall adopt, and renew from time to time, a seal of office, an impression of which shall be filed in the office of the Secretary of the Commonwealth.[72]

1940. Regulation of Records of Domestic Companies—Triennial Examinations—Examination of Foreign Companies.

Sixth.—He shall require every domestic insurance company to keep its books, records, accounts, and vouchers in such manner that he or his authorized representatives may readily verify its annual statements, and ascertain whether the company has complied with the provisions of law; and he shall every three years or oftener if he deems it to be prudent, personally, or by his deputy, actuary, or examiners, visit each domestic insurance company and thoroughly inspect and examine its affairs, to ascertain its financial condition and its ability to fulfill its obligations, whether it has complied with the provisions of law, and any other facts relating to its business methods and management, and the equity of its dealings with its policyholders; and he may in like manner, when he determines it to be prudent for the protection of policyholders in this Commonwealth, visit and examine in person, or by his deputy or examiners, any insurance company of another state or foreign government applying for admission or already admitted to do business in this Commonwealth.[73]

1941. Computation of Reserve Liability—Annuities.

Seventh.—He shall each year compute the reserve liability, as of the thirty-first day of December of the preceding year, of every company authorized to make insurance on lives in this Commonwealth, in accordance with the rules following:—

A.—The net value of all outstanding policies of life insurance in the company, issued prior to the first day of January, one thousand eight hundred and ninety, shall be computed upon the basis of the American experience table of mortality, with interest at not less than four and one-half and not more than six per centum per annum.

(72) Sec. 4, Act of June 1, 1911, P. L., 607.
(73) Sec. 4, Act of June 1, 1911, P. L., 607.

B.—The net value on the last day of December of all outstanding policies, issued between the first day of January, one thousand eight hundred and ninety, and the first day of January, one thousand nine hundred and three, on the combined experience or actuaries' table of mortality, with interest at four per centum per annum.

C.—The net value on the last day of December of all outstanding policies of life insurance, issued on and after the first day of January nineteen hundred and three, on the American experience table of mortality, with interest at three and one-half per centum per annum.

The legal minimum standard for the valuation of annuities issued after January one, one thousand nine hundred and twelve, shall be McClintock's table of mortality among annuitants, with interest at three and one-half per centum per annum; but annuities deferred ten or more years, and written in connection with life or term insurance, shall be valued upon the same mortality table from which the consideration or premiums were computed, with interest not higher than three and one-half per centum per annum:

Provided, however, That any such company may at any time elect to reserve on the American experience table of mortality, with a lower rate of interest; but at a rate, however, not less than three per centum, and its policy obligations shall thereafter be valued accordingly.

When the actual premiums charged for an insurance, granted prior to the passage of this act, by any life insurance company doing business in the Commonwealth, is less than the net premium for such insurance, computed according to the table of mortality and rate of interest prescribed in this act, such company shall be charged, as a separate liability, with the value of an annuity the amount of which shall equal the difference between such premiums, and the term of which in years shall equal the number of future annual payments due on such insurance at the date of the valuation; but it shall be unlawful subsequent to the passage of this act for any such company to issue to a resident of this Commonwealth, or for a domestic company to issue to a non-resident, any insurance for a premium less than that prescribed by the table of mortality and rate of interest corresponding to the reserve value thereof: *Provided, however,* That the provisions of this section for the valuation of policies and for premium rates

shall not apply to companies or associations transacting business on the mutual assessment plan.[74]

1942. Net Value of Policies.

Eighth.—The aggregate net value so ascertained of the policies of any such company shall be deemed its reserve liability, to provide for which it shall hold funds in secure investments of an amount equal to such net value, above all its other liabilities; and it shall be the duty of the Insurance Commissioner, after having determined as above the net value of all the policies in force, to see that the company has that amount in safe legal securities, after all its other debts and claims against it have been provided for. The net value of a policy, at any time, shall be taken to be the single net premium which will, at that time, effect the insurance, less the value at that time of the future net premiums called for by the table of mortality and rate of interest designated.[75]

1943. Acceptance of Valuations of Commissioners of Other States.

Ninth.—He shall accept the valuations made by the Insurance Commissioner of the state under whose authority a life insurance company was organized, when such valuations are made on a basis that will give values at least equal to the valuation above defined, and when the Insurance Commissioner of the state, under which the company was organized, accepts the valuations made by him for the companies organized under the laws of this Commonwealth: *Provided,* The company shall furnish him, on or before the first day of March in each and every year, a certificate from the Insurance Commissioner of such state, setting forth the value of all the policies in force in the company on the previous thirty-first day of December; and any company failing to furnish such certificate shall be required to make full detailed list of policies to the Insurance Commissioner, and shall be liable for all charges and expenses consequent upon not having furnished said certificate.[76]

1944. Deficiency in Net Value—Notification not to Issue New Policies.

Whenever any life insurance company doing business in this Commonwealth has not on hand the net value, as above defined,

(74) Sec. 4, Act of June 1, 1911, P. L., 607.
(75) Sec. 4, Act of June 1, 1911, P. L., 607.
(76) Sec. 4, Act of June 1, 1911, P. L., 607.

of all policies in force, after all other debts and claims against it, including fifty per centum of capital, have been provided for, the Insurance Commissioner shall notify such company and its agents to issue no new policies until its funds become equal to its liabilities. No life insurance company, after notice as herein provided, shall issue new policies under its authority to do business in this Commonwealth, until its funds have become equal to its liabilities and it has obtained from the Insurance Commissioner a certificate to that effect, with authority to resume business. When a life insurance company organized under the laws of this Commonwealth has been notified to cease doing new business, the Insurance Commissioner may, in case it appear from his examination that no fraud or gross incompetence or recklessness is shown to exist in the management, permit the officers of the company to continue in charge of its business for one year; and he may renew the permission, if he is satisfied that the company is likely to retrieve its affairs, or he may institute proceedings to determine what further shall be done.[77]

1945. Reinsurance.

No insurance company or association organized under the laws of this Commonwealth shall reinsure its risks, except by permission of the Insurance Commissioner; but may reinsure part of any individual risk, provided such reinsurances covering risks in this Commonwealth are reinsured in companies authorized to transact business herein. No company which continues to do fire, marine or inland insurance shall be permitted to enter into new contracts to insure lives in this Commonwealth.[78]

1946. Reinsurance Reserves.

In determining the liabilities upon its contracts of insurance of any insurance company other than life insurance, and the amount such company should hold as a reserve for reinsurance, he shall, for casualty insurance companies, charge one-half of the premium on all annual policies written within one year, and on policies written for more than one year he shall charge one-half of the current year's premiums, plus the whole of the premiums for subsequent years. For fire insurance companies he shall charge fifty per centum of the premiums written in their policies upon all

(77) Sec. 5, Act of June 1, 1911, P. L., 607.
(78) Sec. 6, Act of June 1, 1911, P. L., 607.

unexpired risks that have one year, or less than one year, to run, and a pro rata of all premiums on risks having more than one year to run; on perpetual policies he shall charge the deposit received, less a surrender charge of not exceeding ten per centum thereof. From marine and inland risks he shall charge fifty per centum of the premium written in the policy upon yearly risks, and the full amount of the premium written in the policy upon all other marine and inland risks not terminated.[79]

1947. Reserve Against Unpaid Losses of Casualty Companies.

He shall, in calculating the reserve against unpaid losses of casualty companies, other than losses under liability policies, set down by careful estimate in each case the loss likely to be incurred against every claim presented, or that may be presented in pursuance of notice from the insured of the occurrence of an event that may result in a loss; and the sum of the items so estimated shall be the total amount of the reserve; except, in credit insurance, fifty per centum of the premiums on all credit policies expiring in the months of October, November, and December of the current year, less the amount of losses paid on such policies, shall, in addition thereto, be charged in the loss reserve.[80]

1948. Duties of Commissioner in Cases of Impaired Capital—Calls on Stockholders.

Having charged as a liability the reinsurance and loss reserves, as above defined for insurance companies of this Commonwealth other than life, and adding thereto all other debts and claims against the company, the Commissioner shall, in case he finds the capital of the company impaired twenty per centum, give notice to the company to make good the capital within sixty days. Any company receiving notice as aforesaid shall immediately call upon its stockholders for such amounts as will restore its capital to the amount fixed by its charter; and in case any stockholder neglects or refuses to pay the amount called for, after notice personally given or by advertisement, at such time and in such manner as the Commissioner shall approve, the company shall require the return of the original certificate of stock held by such stockholder, and, in lieu thereof, issue new certificates in the proportion that the ascertained value of the assets of the company may,

(79) Sec. 7, Act of June 1, 1911, P. L., 607.
(80) Sec. 8, Act of June 1, 1911, P. L., 607.

as determined by the Commissioner, bear to the original capital, the company paying for any fractional parts of shares. The directors may create new stock and issue certificates therefor, and dispose of the same at not less than par, for an amount sufficient to make up the original capital. Or the Commissioner may, in his discretion, permit the company to reduce its capital and the par value of its shares in proportion to the extent of the impairment; but the capital shall at no time be reduced to an amount less than that required by law for the organization of any such company: *Provided,* That in fixing such reduced capital, not more than twenty per centum of the original capital shall be deducted from the assets on hand, to be retained as surplus funds; nor shall any part of the assets be distributed to stockholders.[81]

1949. Requirements as to Admission to do Business of Foreign Companies—Appointment of Commissioner as Attorney—Service of Process.

No insurance company of any other state or foreign government shall be admitted and authorized to do business until:—

First.—It has filed with the Insurance Commissioner a certified copy of its charter or deed of settlement, a statement of its financial condition and business, signed and sworn to by its proper officers, and copies of forms of all policies it proposes to issue in this Commonwealth.

Second.—It has satisfied the Insurance Commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact. That it has, if a stock company, the requisite amount of capital, fully paid up and unimpaired.

Third.—It shall, by a duly executed instrument filed in his office, constitute and appoint the Insurance Commissioner or his successor its true and lawful attorney, upon whom all lawful processes in any action, rule, order, or legal proceeding against it may be served; and therein shall agree that any lawful process against it, which may be served upon him as its said attorney, shall be of the same force and validity as if served on the company, and that the authority thereof shall continue in force, irrevocable, so long as any liability of the company remains outstanding in this Commonwealth. The service of such process

(81) Sec. 9, Act of June 1, 1911, P. L., 607.

shall be made by leaving the same, in duplicate, in the hands or office of the Commissioner—one copy, certified by the Commissioner as having been served upon him, shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed valid service upon the company.[82]

1950. Commissioner to Forward Copy of Process to Foreign Company—Fee.

When legal process is served upon him as attorney for a foreign company, he shall forthwith forward one of the duplicate copies of the process served on him to its secretary, or, in the case of a company of a foreign country, to its resident manager in the United States. As a condition of valid and effective service, and of the duty of the Commissioner in the premises, the plaintiff in each such process shall pay to the Commissioner, at the time of service thereof, the sum of two dollars, which the said plaintiff shall recover as taxable costs in the case if he prevails in the suit. The Commissioner shall keep a record of all such processes, which shall show the day and hour of service.[83]

1951. Unlawful to Contract or Negotiate Insurance Without Compliance with this Act.

It shall be unlawful for any person, company, or corporation to negotiate or solicit within this Commonwealth any contract of insurance or suretyship, or to effect the same, or to receive and transmit any offer or offers of insurance, or receive or deliver a policy or policies of insurance, or in any manner to aid in the transaction of the business of insurance, without fully complying with the provisions of this act.[84]

1952. Certificates of Authority.

The Insurance Commissioner shall issue certificates of authority to insurance companies of other states and foreign governments and their agents, and to the agents of Pennsylvania companies, and he may renew the certificate of authority of any mutual assessment life or accident association and its agents, which is now lawfully doing business in this Commonwealth, beginning on the first day of April of each year, and continuing in force for one year unless sooner revoked by him; and any certifi-

(82) Sec. 10, Act of June 1, 1911, P. L., 607.
(83) Sec. 11, Act of June 1, 1911, P. L., 607.
(84) Sec. 12, Act of June 1, 1911, P. L., 607.

cates issued after April first shall expire on the thirty-first day of March succeeding. Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance he shall be satisfied, by such examination as he may make and such evidence as he may require, that such company is qualified under the laws of this Commonwealth to transact business herein.[85]

1953. Certification to Commissioner of Names of Agents—Certificates to Agents.

Companies to which certificates of authority are issued, as provided in the preceding section, shall, from time to time, certify to the Insurance Commissioner the names of agents who may be either individuals, partnerships, or corporations, appointed by them to solicit risks in this state; and no such agent, either individual, partnership, or corporation, shall transact business until he, they or it has procured from the Commissioner a certificate showing that the company has complied with the requirements of this act, and that the person, either individual, partnership, or corporation, named in said certificate, has been duly appointed its agent:

Provided, That in case a license is issued to a partnership or corporation, every officer and every soliciting employee of such partnership or corporation shall be required to have an individual license under said act of assembly, and shall be subject to all penalties and other provisions of said act:

Provided further, That as to corporations, this section shall not apply to any which are engaged in any business other than insurance and real estate. Certificates for agents of life insurance companies, other than industrial, shall be issued only upon the written application of persons, copartnerships, or corporations desiring such authority, which applications shall be approved and countersigned by the company which such person, copartnership, or corporation desires to represent, and shall be upon a form prescribed by the Commissioner, giving such information as he may require. The Commissioner shall have the authority to refuse to issue or renew, and to suspend or revoke, certificates previously granted, upon its appearing to his satisfaction that the person, copartnership, or corporation applying for, or to whom a certificate has been previously granted, has by misconduct, vio-

(85) Sec. 13, Act of June 1, 1911, P. L., 607.

lation of law, or otherwise, proved to be unfit, or improper to hold such certificate. Any one whose certificate has been refused, suspended, or revoked shall have the right to appeal to the court of Dauphin County, in the manner appeals are now allowed by law from summary convictions, which said appeal shall be promptly heard and determined by said court.[86]

1954. Annual Reports to Commissioner.

Every insurance company shall annually, on or before the first day of March, file in the office of the Insurance Commissioner a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year, and its business of that year. The Commissioner shall annually furnish to each of the insurance companies authorized to do business in this Commonwealth blanks, in such form as he may adopt, for their annual statements; and he may make such changes, from time to time, in the form of the same as shall seem to him best adapted to elicit from them a true exhibit of their financial condition: *Provided,* That insurance companies of foreign governments, doing business in this Commonwealth, shall be required to return only the business done in the United States, and the assets held by and for it within the United States for the protection of policyholders therein. Any company which neglects to make and file its annual statement in the form or within the time herein provided shall forfeit one hundred dollars for each day during which such neglect continues, and, upon notice by the Commissioner, its authority to do new business shall cease while such default continues. For wilfully making a false annual or other statement required by law, an insurance company, and the persons making oath to or subscribing the same, shall severally be punished by a fine of not less than five hundred dollars, nor more than five thousand dollars. A person who wilfully makes oath to such false statement shall be guilty of perjury.[87]

1955. Reports of Amounts of Premiums—State Tax on Gross Premiums.

Every insurance company or association of another state or foreign government, authorized to do business in this Commonwealth, shall make report to the Insurance Commissioner, on or

(86) Sec. 14, Act of June 1, 1911, P. L., 607.
(87) Sec. 15, Act of June 1, 1911, P. L., 607.

before March first of each year, under oath of its president or secretary, showing the entire amount of premiums of every character and description received from business transacted in the Commonwealth during the year, or fraction of year, ending with the thirty-first day of December preceding, whether said premiums were received in money or in the form of notes, credits, or any other substitute for money, or whether the same were collected in this Commonwealth or elsewhere, and pay into the State Treasury the requisite tax upon all such premiums: *Provided,* That companies, in making such report, may deduct from the gross premiums received all premiums returned on policies cancelled or not taken, and all premiums actually paid for reinsurances, where the same are effected in companies duly licensed to do business in this Commonwealth.[88]

1956. Definition of "Agent"—Penalty for Acting as Agent Without Authority.

An agent is a person, firm, or corporation authorized in writing by a company to solicit or countersign or issue policies of insurance in its behalf. No person, firm, or corporation shall act as agent in this Commonwealth of an insurance company, until there has been issued by the Commissioner a certificate showing that the company has complied with the requirements of this act, and that the person, firm, or corporation named has been duly appointed its agent. Any person, firm, or corporation transacting business within this Commonwealth as the agent of an insurance company, without a certificate of authority as required by this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of five hundred dollars.[89]

1957. Personal Liability of Agent.

An insurance agent shall be personally liable on all contracts of insurance or suretyship unlawfully made by or through him, directly or indirectly, for or in behalf of any company or association not authorized to do business in this Commonwealth. Any person soliciting risks, forwarding premiums, or countersigning or delivering policies, shall be deemed to be the agent of the company within the meaning of this section.[90]

(88) Sec. 16, Act of June 1, 1911, P. L., 607.
(89) Sec. 17, Act of June 1, 1911, P. L., 607.
(90) Sec. 18, Act of June 1, 1911, P. L., 607.

1958. Definition of "Insurance Broker."

An insurance broker is a person, not an officer or agent of the company interested, who, for compensation, acts or aids in any manner in obtaining insurance for a person other than himself.[91]

1959. Licensing of Insurance Brokers.

The Insurance Commissioner may issue to any suitable person a license to act as an insurance broker, to negotiate contracts of insurance or reinsurance, or place risks, or effect insurance or reinsurance with any insurance company, other than a life insurance company, established in this Commonwealth, or its agents; and with the authorized agents of any insurance company, other than a life insurance company, of another state or foreign government, duly admitted to do business in this Commonwealth: *Provided,* That before any license is issued under this section, the person, firm, or corporation desiring the license shall make application in writing to the Insurance Commissioner, upon blanks furnished by him for that purpose, and answer such interrogatories as he may require, and when he shall be satisfied that the applicant is trustworthy and competent to transact business. A broker's license shall remain in force for one year, unless revoked by the Commissioner for cause. When revoked, the Commissioner shall publish the fact in such manner as he determines proper for the protection of the public. Broker's licenses may be issued to a duly organized insurance firm or an incorporated insurance or real estate agency company.[92]

1960. Penalty for Acting as an Insurance Broker Without a License.

Any person, firm, or corporation transacting business as an insurance broker, within this Commonwealth, without a license, as aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of three hundred dollars; and any company, or the agent of any company, paying, allowing, or giving any compensation or commission to any person, firm, or corporation transacting business as an insurance broker without a license as aforesaid, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of one hundred dollars.[93]

(91) Sec. 19, Act of June 1, 1911, P. L. 607.
(92) Sec. 20, Act of June 1, 1911, P. L., 607.
(93) Sec. 21, Act of June 1, 1911, P. L., 607.

1961. Solicitors of Insurance are Agents.

A person, not a duly licensed insurance broker, who for compensation solicits insurance on behalf of any insurance company, or transmits for a person other than himself an application for or a policy of insurance to or from such company, or offers or assumes to act in the negotiation of such insurance, shall be an insurance agent within the intent of this act, and shall thereby become liable to all the duties, requirements, liabilities, and penalties to which an agent of such company is subject.[94]

1962. Embezzlement by Agent or Broker.

An insurance agent or broker who acts in negotiating a contract of insurance for an insurance company lawfully doing business in this Commonwealth, and who embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies, any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be deemed guilty of larceny.[95]

1963. Penalty for the Doing of Business by a Company Without a Certificate of Authority.

Any insurance company or association doing an insurance or surety business within this Commonwealth, without a certificate of authority as required by this act, shall forfeit and pay to the Commonwealth the sum of five hundred dollars for each month or fraction thereof in which such illegal business was transacted. Any person negotiating or soliciting any contracts of insurance or suretyship in this Commonwealth, collecting and forwarding premiums or delivering policies, for any company or association to which a certificate of authority has not been granted, shall be deemed to be the agent of the company or association in any legal proceedings brought against it.[96]

1964. Penalty for Doing Business by a Company which has not Made the Insurance Commissioner its Attorney.

Any person, acting for himself or for others, not having been specially and lawfully licensed so to do, who solicits or procures,

(94) Sec. 22, Act of June 1, 1911, P. L., 607.
(95) Sec. 23, Act of June 1, 1911, P. L., 607.
(96) Sec. 24, Act of June 1, 1911, P. L., 607.

or aids in the solicitation or procurement, of policies or certificates of insurance from, or adjusts losses or in any manner aids in the transaction of any business for, any foreign insurance corporation, or any association, partnership, or association of individuals, which has not executed and filed in the office of the Insurance Commissioner a written appointment of the Commissioner to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served, is guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than three hundred dollars and not more than one thousand dollars.[97]

1965. Penalty for Acting for an Unauthorized Foreign Company.

Any person or persons, or any agent, officer or member of any insurance firm or corporation, within this Commonwealth, except as hereinafter provided, paying or receiving or forwarding any premiums, applications for insurance, or in any manner securing, helping, or aiding in the placing of any insurance or effecting any contracts of insurance upon property within this Commonwealth, directly or indirectly, with any insurance company, association, or person not of this Commonwealth, and which has not been authorized to do business in this Commonwealth; and any person, company, or corporation, in this Commonwealth, procuring, receiving, or forwarding applicants for insurances or suretyship in, or issuing or delivering policies for, any company or association not authorized to do business in this Commonwealth, for any other than himself; shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than three hundred dollars nor more than one thousand dollars, and, upon conviction of a second offense, shall be sentenced to pay a like fine and undergo imprisonment not exceeding one year, or either or both, at the discretion of the court.[98]

1966. Licenses to Brokers to Act for Unauthorized Companies.

The Insurance Commissioner may issue a license, revocable at any time, permitting the person, firm, or corporation named therein to act as a broker to procure for his or their clients policies of

(97) Sec. 25, Act of June 1, 1911, P. L., 607.
(98) Sec. 26, Act of June 1, 1911, P. L., 607.

fire or marine insurance from companies or associations not authorized to do business in this Commonwealth. Before any fire or marine insurance shall be procured under or by virtue of said license, there shall be executed and filed with the Insurance Commissioner by the licensed broker, and also by the party desiring the insurance, an affidavit which shall have force and effect for one year only from date thereof, setting forth that the party desiring insurance is, after diligent effort, unable to procure the amount required to protect the property owned or controlled, or entrusted to him, from fire or marine insurance companies,—mutual insurance companies or associations excepted,—duly authorized to transact business in this Commonwealth. The licensed broker procuring or delivering policies in such unauthorized companies or associations shall keep a separate account thereof, open at all times, without notice, to the inspection of the Insurance Commissioner, showing the exact amount of insurance placed, giving the name of the insured, the location of the insured property, the gross premium mentioned in the policy, the name of the corporation, person, partnership, or association issuing the contract, and the number, date, and term of the policy. Each policy shall have written or printed on the outside of it the name of the licensed broker who obtained the same and introduced it into the Commonwealth, and after his name shall appear the words, "licensed excess insurance broker." *Provided,* That nothing in this section shall be so construed as giving any such licensed broker authority to act as agent for, or to in any way represent, any such unlicensed company or association in this Commonwealth.[99]

Each party receiving such license shall, before transacting any business thereunder, execute and deliver to the Insurance Commissioner a bond, in the penal sum of one thousand dollars, with such sureties as the Commissioner may approve, conditioned that said broker will faithfully comply with all requirements of the preceding section of this act, and will pay to the Insurance Commissioner, in January of each year, a tax of three per centum upon the gross premiums named in the policies delivered to the policyholders and upon all policies procured by him, in accordance with the preceding section, during the year. Deduction shall be allowed for net premiums returned on policies cancelled. In default of payment of the tax, as herein provided, before the

(99) Sec. 27, Act of June 1, 1911, P. L., 607.

thirtieth day of January of each year, the Insurance Commissioner shall demand a statement, under oath, from the broker; and, failing to obtain the same, it shall be his duty to proceed against him, in the same manner as though he had acted without a license.[100]

1967. Fees to be Collected by the Insurance Commissioner—Local Taxation of Insurance Companies and their Agents and Insurance Brokers Forbidden.

The Insurance Commissioner shall collect, and pay into the State Treasury daily, for the purpose of defraying the expenses of enforcing this act, charges and fees as follows: For valuation of life policies, not exceeding one cent for each thousand dollars of insurance valued; for filing copy of charter, twenty-five dollars; for filing annual or other statements, twenty dollars; for license to company, or certified copy or duplicate thereof, two dollars; for license as excess insurance broker, one hundred dollars; for license as insurance broker, ten dollars for an individual, and twenty-five dollars for a firm or corporation; for licenses as the agent of any company not incorporated under the laws of Pennsylvania, two dollars; for each copy of any paper filed in the department, twenty cents per folio, and one dollar for certifying the same; for any other certificate required, except licenses for agents of domestic companies, two dollars; for service of process, two dollars. It shall be unlawful for any city, county, or municipality to impose or collect any license-fee or tax upon insurance companies or their agents, or insurance brokers, authorized to transact business under this act.[1]

1968. Imposition of Taxes, Licenses, Etc., on Foreign Companies Equal to Those Imposed by Other States in Excess of Those Imposed in Pennsylvania.

If, by the laws of any other state, any taxes, fines, penalties, licenses, fees, or other obligations or prohibitions, additional to or in excess of those imposed by the laws of this Commonwealth upon insurance companies of other states and their agents, are imposed on insurance companies of this Commonwealth and their agents doing business in such state, like obligations and prohibitions shall be imposed upon all insurance companies of such state

(100) Sec. 28, Act of June 1, 1911, P. L., 607.
(1) Sec. 29, Act of June 1, 1911, P. L., 607.

doing business in this Commonwealth, so long as such laws remain in force.[2]

1969. Collection of Taxes, Fines and Penalties.

The taxes, fines, and penalties provided in this act shall in case of non-payment after notice from the Commissioner, be collected as taxes upon corporations or individuals are now collected by law; and for this purpose the Insurance Commissioner shall have all the powers now conferred by law upon the Auditor General in the settlement of accounts; subject, however, to the approval of the State Treasurer, and to the right of appeal as in other cases.[3]

1970. Exemptions from and Exceptions to the Operation of the Act.

The provisions of this act shall apply to all companies or associations transacting any class of insurance business; but they shall not be applicable to fraternal benefit societies, orders, or associations having a lodge system, with ritualistic form or work and representative form of government; or to beneficial and relief associations formed by churches, societies, classes, firms, or corporations, with or without ritualistic form of work, the privileges and membership in which are confined to the members of such churches, societies, or classes, and to members and employees of such firms or corporations; nor shall they apply, excepting the second, third and sixth paragraphs of the third section, and the fifteenth section hereof, to insurance companies of this Commonwealth, organized and conducted on the purely mutual plan, with unlimited liability, or with premium notes only as the basis of security; but such mutual insurance companies shall be required, at all times, to answer such interrogatories as the Commissioner may require in order to ascertain their true character and condition.[4]

1971. Acts Repealed.

The act of April fourth, eighteen hundred and seventy-three, entitled, "An act to establish an Insurance Department," the act of April twenty-second, eighteen hundred and seventy-four, entitled "An act to prohibit foreign corporations from do-

(2) Sec. 30, Act of June 1, 1911, P. L., 607.
(3) Sec. 31, Act of June 1, 1911, P. L., 607.
(4) Sec. 32, Act of June 1, 1911, P. L., 607.

ing business in Pennsylvania, without having known places of business and authorized agents," in so far as it applies to insurance companies; the act of June twentieth, eighteen hundred and eighty-three, entitled "An act amending an act, entitled 'An act to establish an Insurance Department;'" the act of May ninth, eighteen hundred and eighty-nine, entitled "An act to provide for the valuation of life insurance policies," the act of March nineteenth, nineteen hundred and three, entitled "An act to provide for the valuation of life insurance policies"; the act of April twenty-second, nineteen hundred and nine, entitled "An act relating to the service of legal process upon foreign insurance companies"; the act of June seventh, nineteen hundred and seven, entitled "An act to amend a supplement to an act, entitled 'An act to establish an Insurance Department,'" and all other acts, or parts of acts, inconsistent herewith, be and the same are hereby repealed.[5]

1972. Construction of Act.

The provisions of this act so far as they are the same as those of existing laws shall be construed as a continuation of such laws, and not as new enactments; and the repeal by this act of any provision of law shall not revive any law heretofore repealed or superseded. It shall not affect any act done, liability incurred, or any right accrued and established, or any suit or prosecution, civil or criminal, pending or to be instituted, to enforce any right or penalty or punish any offense under the authority of the repealed laws; and any person who, at the time when said repeal takes effect, holds office under any of the laws repealed, shall continue to hold such office according to the tenure thereof.[6]

1973. Incorporation of Fire and Marine Insurance Companies.

Any ten or more natural persons, citizens of this Commonwealth, may associate in accordance with the provisions of this act and form an incorporated company for the following purposes:—

For making insurances—

(a.) On dwelling houses, stores, and all kinds of buildings, and household furniture and other property, against loss or damage by fire, lightning, and explosion, whether fire ensue or

(5) Sec. 33, Act of June 1, 1911, P. L., 607.
(6) Sec. 34, Act of June 1, 1911, P. L., 607.

not, tornadoes, wind-storms, earthquakes, hail or snow, and against loss or damage by water to any goods or premises, arising from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, and of water-pipes, and against accidental injury to such sprinklers, pumps, or other apparatus, and also from the use and occupancy of any building, plant, or manufacturing establishment when caused by fire, and to effect reinsurance of any risk taken by it; and,

(b.) Upon vessels, boats, cargoes, goods, merchandise, freight, and other property, against loss or damage by all or any of the risks of lake, river, canal, and inland navigation and transportation; including insurance upon automobiles, whether stationary or being operated under their own power, which shall include all or any of the hazards of fire, explosion, transportation, collision, and loss in transit, by burglary or theft, or both, but shall not include insurances against loss by reason of bodily injury to the person; and to effect reinsurance of any risk taken by it; and,

(c.) Upon vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, banknotes, bills of exchange, and other evidence of debt, bottomry and respondentia interests, and every insurance appertaining to or connected with marine risks, and risks of transportation and navigation; and to effect reinsurance of any risk taken by it.[7]

1974. Articles of Association.

Such persons shall associate by articles of agreement in writing, for the purpose of forming an insurance company, which agreement shall specify:

(a.) The name by which the company shall be known.

(b.) The class of insurance for the transaction of which it is constituted.

(c.) The plan or principle upon which the business is to be conducted.

(d.) The place in which it is to be established or located.

(e.) The amount of its capital.

(f.) The general objects of the company.

(g.) The proposed duration of the company.

(h.) The powers it proposes to have and exercise.

(7) Sec. 1, Act of June 1, 1911, P. L., 559.

Any name not previously in use by any existing company may be adopted, but such name must clearly designate the objects and purposes of the company. The Insurance Commissioner may reject any name or title, when, in his judgment, it too closely resembles that of any existing company, or is likely to confuse or mislead the public.[8]

1975. Selection of Officers—Subscription Books.

The subscribers to said articles of agreement shall choose from their number a president, a secretary, a treasurer, and such number of directors, not less than five, as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders, and until their successors are duly chosen and qualified as hereinafter provided. The subscribers shall open books for the subscription of stock in the company, at such times and places as they shall deem convenient and proper, and shall keep the same open until the full amount of stock specified in the articles of agreement is subscribed.[9]

1976. Shares of Stock in Joint-stock Companies—Forfeiture of Partial Payments.

The capital of a joint company shall be divided into shares of not less than ten dollars each; payment of which shall be made in lawful money, ten per centum on each share at the time of subscribing, and the balance at such times as the company may direct, not exceeding nine months from the time of subscription; and the company may prescribe such rules with regard to forfeiture of partial payments on subscriptions as they may deem advisable, which rules shall be binding upon subscribers, provided they are made known at the time of subscription.[10]

1977. Certificate to Commissioner of Insurance.

Whenever one-half of the capital mentioned in said articles of agreement shall have been subscribed, and twenty per centum on each share paid into the hands of the treasurer of the company, the president, treasurer, and a majority of the directors, shall, under their respective oaths or affirmations, make a certificate to the Insurance Commissioner; stating the number and par value

(8) Sec. 2, Act of June 1, 1911, P. L., 559.
(9) Sec. 3, Act of June, 1, 1911, P. L., 559.
(10) Sec. 4, Act of June 1, 1911, P. L., 559.

of the shares of stock in said company, the names and residences of the subscribers, the number of shares subscribed by each, the amount paid in on each share, the amount of money in the hands of the treasurer on account of such payments, and where the same is deposited.[11]

1978. Acknowledgment of Articles of Association—Approval Thereof—Letters Patent.

The subscribers to said articles of agreement shall acknowledge the same before some person empowered to receive acknowledgments of deeds, and forward the same, in duplicate, to the Insurance Commissioner, who shall, in case he approves of the title of the proposed company, certify in duplicate that all of the requirements of this act in relation to the incorporation of insurance companies have been complied with, and submit said articles of agreement, certified in duplicate as aforesaid, to the Attorney General, for examination; and if found by him to be in accordance with the provisions of this act, and not inconsistent with the Constitution of this Commonwealth and of the United States, he shall certify the same, in duplicate, to the Governor, with his approval endorsed thereon. Upon receipt of such articles of agreement, certified as aforesaid, the Governor shall, in case he approves the same, endorse his approval thereon in duplicate, and cause letters patent to issue, erecting the subscribers to said articles of agreement and their associates into a body corporate, with succession under the name designated in said articles of agreement, but it shall not have power to engage in the business of insurance until the provisions of this act have otherwise been complied with.[12]

1979. Recording of Articles of Association.

The Secretary of the Commonwealth shall cause the articles of agreement aforesaid, together with the proceedings had thereon, and certificate to the Governor, after the approval of the Governor has been endorsed on said articles of agreement, and letters patent have been issued, to be recorded in a book kept for that purpose; and he shall return one of the said articles of agreement to the company, who shall have the same recorded in the recorder's office of the county in which said company is located. The Secretary of the Commonwealth shall furnish the

(11) Sec. 5, Act of June 1, 1911, P. L., 559.
(12) Sec. 6, Act of June 1, 1911, P. L., 559.

Insurance Commissioner with a certified copy of said letters patent; and shall also certify the duplicate articles of agreement, with all endorsements thereon, and file the same in the office of the Insurance Commissioner; and certified copies of the same may be used in evidence for or against the company, with the same effect as the original.[13]

1980. Issue of Stock Certificates—Certificates of Authority.

As soon as the entire amount of the authorized capital of a joint-stock company, incorporated under this act, has been paid in, certificates shall be issued therefor to the persons entitled to receive the same, which certificates shall be transferable at any time upon the books of the company; and the president or secretary of the company shall notify the Insurance Commissioner that the capital of the company has been paid in, and that it is ready to commence business. Upon receipt of which notice the Insurance Commissioner shall, in person, or by deputy or examiners, examine the assets of the company; and, in case he finds that it is possessed of funds, invested in the manner hereinafter specified, equal to the amount of its capital, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this act, and that it has the requisite amount of capital for the transaction of business in the Commonwealth, which certificate shall empower the company to issue policies, and otherwise transact the business of insurance for which it was organized.[14]

1981. Non-User of Franchises.

If any company created under this act does not commence to issue policies within one year from the date of its letters patent; or if any domestic insurance company, after it has commenced to issue policies, shall cease for the period of two years to make new insurance; its corporate powers and existence shall cease; and the court, upon petition of the Attorney General, may fix by decree the time within which it shall settle and close its affairs.[15]

1982. Term of Charters.

The charters for incorporation named in this act may be perpetual or limited in time, as the articles of agreement shall

(13) Sec. 7, Act of June 1, 1911, P. L., 559.
(14) Sec. 8, Act of June 1, 1911, P. L., 559.
(15) Sec. 9, Act of June 1, 1911, P. L., 559.

specify; and the General Assembly reserves the power to revoke or annul any charter, granted, or accepted under this act, whenever, in the opinion of the said General Assembly, it may be injurious to the citizens of this Commonwealth; in such manner, however, that no injustice shall be done to the corporators or their successors.[16]

1983. By-Laws—Seal.

A company organized under this act shall have power to make by-laws as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and to make and have a common seal, and change and alter the same at pleasure.[17]

1984. Annual Meetings—Election of Directors—Powers—Quorum.

The annual meeting for the election of directors shall be held at such time in the month of January as the by-laws of the company may direct; of the time and place of which meeting at least thirty days' previous notice shall be given to the stockholders, by publication not less than three times in at least two daily or weekly newspapers, and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices, published in the city or county wherein the company is domiciled. At such annual meeting the stockholders shall elect by ballot, from their own number, not less than seven directors, a majority of whom shall be residents of this Commonwealth, to serve for one year and until their successors are duly chosen: *Provided, however,* That any company incorporated under any general or special law of this Commonwealth may provide in its by-laws for the division of its board of directors into two or three classes, and the election thereof at its annual meetings in such manner that the members of one class only shall retire, and their successors be chosen, each year. Vacancies may be filled by election by the board for the unexpired term. In the choice of directors, and at all meetings of the company, each share of stock shall be entitled to one vote. Proxies may be authorized by written power of attorney. The record of the votes made by the secretary, which shall show whether the same were cast in person or by proxy, shall be evidence of all such

(16) Sec. 10, Act of June 1, 1911, P. L., 559.
(17) Sec. 11, Act of June 1, 1911. P. L., 559.

elections. If, for any cause, the stockholders shall fail to elect directors at any annual meeting, the directors may call a special meeting for that purpose, on some subsequent day, of which notice shall be given as hereinbefore provided. The directors, before they are qualified to act, shall file with the secretary a written acceptance of the trust; and they, or a majority thereof, when statedly convened at the office of the company, or when convened after special notice to each member, shall be competent to exercise all the powers vested in them by law. Not less than four shall constitute a quorum. The directors shall annually choose, by ballot, a president, who shall be a member of the board, a secretary, a treasurer, who may also be either the president or secretary, and such other officers as the by-laws may provide; and they shall fix the salaries of the president and secretary, and fix the salaries or compensation of such other officers and agents as the by-laws prescribe. Vacancies in any office may be filled by the directors, or by the stockholders, as the by-laws shall prescribe.[18]

1985. Execution of Policies—Combination Policies.

Policies of insurance, made or entered into by any company, may be made either with or without the seal thereof, and they shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and attested by the secretary, and when so subscribed and attested shall be obligatory on the company.

Two or more joint-stock fire insurance companies, authorized to transact business in this Commonwealth, may issue a combination policy, using a distinctive title therefor, which title shall appear at the head of such policy, followed by the titles of the several companies obligated thereupon, and which policy shall be executed by the officers of each of such companies: *Provided*, That before such companies shall issue such combination policy, they shall have received the express permission of the Insurance Commissioner to issue the same, and the title has been approved by him: *Provided further*, That the policy shall state that it is a joint contract, and that each company is only liable for a specific percentage of any loss or damage occurring thereunder.[19]

(18) Sec. 12, Act of June 1, 1911, P. L., 559.
(19) Sec. 13, Act of June 1, 1911, P. L., 559.

1986. Minimum Paid-up Capital—Acceptance of Act.

Companies organized under this act, for any of the purposes mentionel in either sub-divisions (a) or (b) of section one, must have a paid up capital of not less than one hundred thousand dollars; if for all the purposes mentioned in subdivisions (a) and (b), two hundred thousand dollars; and if for all of the purposes mentioned in section one, four hundred thousand dollars. Companies heretofore organized under any general or special law of this Commonwealth, to transact fire, inland or marine insurance, may transact any or all of the classes of insurance authorized herein, by providing the requisite capital required for companies organized hereunder, and by filing with the Insurance Commissioner a resolution of the board of directors, duly approved by the stockholders at a meeting specially called for that purpose, accepting the provisions of this act, and agreeing to be governed thereby as fully as though organized hereunder.[20]

1987. Minimum Paid-up Capital of Foreign Companies.

Companies of other states and foreign governments, to be licensed to do in this Commonwealth any one of the classes of business mentioned in the first section of this act, must have a paid up and safely invested capital, if a company of any other state, or a deposit in the United States, if a company of a foreign government, of not less than two hundred thousand dollars; and, if to do all of the classes of business mentioned in the first section hereof, a paid up capital or deposit of not less than four hundred thousand dollars. A mutual insurance company of another state may be licensed to transact the class of business mentioned in sub-division (a) of the first section of this act, when it has a surplus over all liabilities, including unearned premiums, computed in accordance with the laws of this Commonwealth, of not less than one hundred thousand dollars. If to transact the classes of business mentioned in sub-divisions (b) and (c), its surplus over all liabilities must be not less than two hundred and fifty thousand dollars.[21]

1988. Investments of Capital.

The capital of any fire or fire and marine insurance company of this Commonwealth shall be invested only as follows:—

First. In such real estate as it is authorized by this act to hold.

(20) Sec. 14, Act of June 1, 1911, P. L., 559.
(21) Sec. 15, Act of June 1, 1911, P. L., 559.

Second. In bonds of the United States or District of Columbia, or of any state or territory of the United States or Canada.

Third. In the legally authorized bonds or notes of any city, county, township, municipality, school or water district of this Commonwealth, or of any other state or territory of the United States or Canada.

Fourth. In the bonds or notes of any solvent railroad or street railway corporation, upon which no default in interest has been made.

Fifth. In ground-rents and loans upon improved and unincumbered real estate provided that no loan on such real estate shall exceed sixty-six and two-thirds per centum of the fair market value thereof at the time of making such loan.[22]

1989. Investments of Surplus—Forbidden Investments.

Any money, over and above the capital, of any such insurance company, may be invested in the securities above enumerated, or in the stock or other evidence of indebtedness of any solvent dividend-paying corporation, created under the laws of this Commonwealth or of any other state of the United States, or loaned upon the pledge of the same, except its own stock, or the stock of any other insurance company transacting like classes of business: *Provided,* The current market value of such securities shall be at least twenty per centum more than the sum loaned thereon. But no such insurance company shall invest any of its funds in any unincorporated business or enterprise; nor in the stocks or evidence of indebtedness of any corporation, the owners or holders of which stock or evidence of indebtedness may, in any event, be or become liable on account thereof to any assessment, except for taxes. Not more than one-fifth of its capital shall be invested in a single mortgage, nor shall any of its funds be loaned on personal security. If any investment or loan is made in a manner not authorized by this act, the officers and directors making or authorizing the same shall be personally liable for any loss occasioned thereby.[23]

1990. Holding of Real Estate.

No company organized under this act, and no such insurance company heretofore incorporated under any general or special

(22) Sec. 16, Act of June 1, 1911, P. L., 559.
(23) Sec. 17, Act of June 1, 1911, P. L., 559.

law of this Commonwealth, shall purchase, hold, or convey real estate, except for the purpose and in the manner herein set forth; to wit,—

First. Such as shall be requisite for its convenient accommodation in the transaction of its business.

Second. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due.

Third. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as shall have been purchased at sales upon judgments, decrees, or mortgages, obtained or made for debts due the company, or for debts due other persons, where said company may have liens or incumbrances on the same, and the purchase is deemed necessary to save the company from loss; and it shall not be lawful for any such company to purchase or hold real estate in any other case or for any other purpose. Any real estate purchased, received, or acquired under the second, third, and fourth paragraphs of this section, which has been held for a period of more than five years from the date of its purchase, receipt or acquisition, must be sold and disposed of within a period of six months after due notice to the company from the Insurance Commissioner to sell and convey the same: *Provided,* That the Commissioner may extend the time for such disposition, if he believes the interest of the company will suffer materially by a forced sale.[24]

1991. Dividends.

No such insurance company, heretofore or hereafter organized, shall make any dividend on its capital except from the profits arising from its business; and there shall first be charged, as a liability, the capital of the company, all unpaid losses or other claims, all liabilities for unearned premiums, and also all sums due the company on bonds and mortgages, bonds, stocks, and book account, of which no part of the principal or the interest thereon has been paid during the last calendar year, and for which the foreclosure or suit has not been commenced for collection, or which after judgment obtained thereon shall have remained more than two years unsatisfied, and on which interest

(24) Sec. 18, Act of June 1, 1911, P. L., 559.

shall not have been paid, and all interest due and remaining unpaid, and all other debts or obligations of the company.[25]

1992. Amendment of Charters.

Any fire or marine insurance company of this Commonwealth may procure an amendment to its charter, either at any stated or at a special meeting of the stockholders, notice of the object of which meeting being given, by advertisement for four weeks preceding, in at least two daily or weekly newspapers and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices, published in the city or county where the principal office of the company is located, or by circular mailed to the address of each stockholder. If at such meeting two-thirds of the votes cast, in person or by proxy, shall favor a resolution agreeing that said company shall hold its charter subject to the provisions of the Constitution of the Commonwealth, and setting forth at length the sections of its existing charter which it desires to retain, and agreeing to be subject to the provisions of this act, said resolution and the number of votes cast for and against the same at the special meeting aforesaid shall be spread on the records of said company, and a certified copy of the same forwarded to the Insurance Commissioner, who shall submit the same to the Attorney General, and, in case he approves of said resolution, he shall certify his approval thereof to the Governor, and when approved by the Governor and recorded in the office of the Secretary of the Commonwealth, they shall be deemed and taken to form part of the charter of said company.[26]

1993. All Fire and Marine Companies Subject to the Act.

All fire and marine insurance companies heretofore or hereafter incorporated, or formed by authority of any general or special law, shall be subject to the provisions and requirements of this act.[27]

1994. Acts Repealed.

The Act of May first, eighteen hundred and seventy-six, entitled "A supplement to an act, entitled 'An act to establish an

(25) Sec. 19, Act of June 1, 1911, P. L., 559.
(26) Sec. 20, Act of June 1, 1911, P. L., 559.
(27) Sec. 21, Act of June 1, 1911, P. L., 559.

insurance department,' et cetera, in so far as it applies to the incorporation and regulation of fire and marine insurance companies whose incorporation and regulation are provided for herein, and all other acts or parts of acts inconsistent herewith, be and the same are hereby repealed.[28]

1995. Incorporation of Casualty Insurance Companies.

Any ten or more natural persons, citizens of this Commonwealth, may associate in accordance with the provisions of this act and form an incorporated company for any of the following purposes:—

One.—Guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts, other than insurance policies; guaranteeing the performance of insurance contracts, where surety bonds are accepted by State or municipalities in lieu of actual deposits; guaranteeing and executing all bonds, undertakings, and contracts of suretyship.

Two.—To insure against injury, disablement, or death resulting from traveling or general accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including a funeral benefit to an amount not exceeding one hundred dollars.

Three.—To insure glass against breakage.

Four.—To insure any one against loss or damage resulting from accident to or injury, fatal or non-fatal, suffered by an employee or other person, for which the person insured is liable; or against damage to property caused by automobiles, or by horses, or any vehicles drawn by animal power, for which loss or damage the person insured is liable.

Five.—To insure steam-boilers or fly-wheels, pipes, engines, and machinery connected therewith or operated thereby, against loss caused by explosion and accident; and against loss or damage to life, person, or property resulting therefrom; and against loss of use and occupancy caused thereby; and to make inspection of, and issue certificates of inspection upon, such boilers, fly-wheels, pipes, engines, and machinery.

Six.—To insure against loss by burglary or theft, or both.

Seven.—To carry on the business of credit insurance or guaranty, either by agreeing to purchase uncollectible debts or

(28) Sec. 22, Act of June 1, 1911, P. L., 559.

otherwise; to insure against loss or damage, from the failure of persons indebted to the insured to meet their liabilities.

Eight.—To insure any goods or premises against loss or damage by water, caused by the breakage or leakage of sprinklers, pumps, water-pipes, or plumbing and its fixtures; and against accidental injury, from other causes than fire or lightning, to such sprinklers, pumps, water-pipes, plumbing and fixtures; and to make inspections of, and to issue certificates of inspection upon, such sprinklers and pipes.

Nine.—To insure against loss or damage to property arising from accidents to elevators, bicycles, automobiles, and vehicles, except rolling-stock of railways.

Ten.—To insure horses, cattle, and other live-stock.

Eleven.—To insure against loss by any other casualty not included under the foregoing heads, except life, fire, marine, or title insurance, which may be a proper subject of insurance.[29]

1996. Articles of Association.

Such persons shall associate by articles of agreement, in writing, for the purpose of forming an insurance company, which agreement shall specify:

(a.) The name by which the company shall be known.

(b.) The class of insurance for the transaction of which it is constituted.

(c.) The plan or principle upon which the business is to be conducted.

(d.) The place in which it is to be established or located.

(e.) The amount of its capital.

(f.) The general objects of the company.

(g.) The proposed duration of the company.

(h.) The powers it proposes to have and exercise.

Any name not previously in use by any existing company may be adopted, but such name must clearly designate the object and purpose of the company. The Insurance Commissioner may reject any name or title, when, in his judgment, it too closely resembles that of any existing company, or is likely to confuse or mislead the public.[30]

(29) Sec. 1, Act of June 1, 1911, P. L., 567.

(30) Sec. 2, Act of June 1, 1911, P. L., 567.

1997. Selection of Officers—Subscription Books.

The subscribers to said articles of agreement shall choose from their number a president, a secretary, a treasurer, and such number of directors, not less than seven, as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders, and until their successors are duly chosen and qualified, as hereinafter provided. The subscribers shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep the same open until the full amount of stock specified in the articles of agreement is subscribed.[31]

1998. Shares of Stock in Joint-stock Companies—Forfeiture of Partial Payments.

The capital of a joint-stock company shall be divided into shares of not less than ten dollars,—payment of which shall be made in lawful money, ten per centum of each share at the time of subscribing, and the balance at such time as the company may direct, not exceeding nine months from the time of subscription; and the company may prescribe such rules with regard to forfeiture of partial payments on subscriptions as they may deem advisable, which rules shall be binding upon subscribers, provided they are made known at the time of subscription.[32]

1999. Certificate to Commissioner of Insurance.

Whenever one-half of the capital mentioned in said articles of agreement shall have been subscribed, and twenty per centum on each share paid into the hands of the treasurer of the company, the president, treasurer, and a majority of the directors shall, under their respective oaths or affirmations, make a certificate to the Insurance Commissioner, stating the number and par value of the shares of stock in said company, the names and residences of the subscribers, the number of shares subscribed by each, the amount paid in on each share, the amount of money in the hands of the treasurer on account of such payments, and where the same is deposited.[33]

(31) Sec. 3, Act of June 1, 1911, P. L., 567.
(32) Sec. 4, Act of June 1, 1911, P. L., 567.
(33) Sec. 5, Act of June 1, 1911, P. L., 567.

2000. Acknowledgment of Articles of Association—Approval Thereof—Letters Patent.

The subscribers to said articles of agreement shall acknowledge the same before some person empowered to receive acknowledgments of deeds, and forward the same in duplicate to the Insurance Commissioner, who shall, in case he approves of the title of the proposed company, certify in duplicate that all of the requirements of this act in relation to the incorporation of insurance companies have been complied with, and submit said articles of agreement to the Attorney General for examination, and if found by him to be in accordance with the provisions of this act, and not inconsistent with the Constitution of this Commonwealth and of the United States, he shall certify the same in duplicate to the Governor, with his approval endorsed thereon. Upon receipt of such articles of agreement, certified as aforesaid, the Governor shall, in case he approves the same, endorse his approval thereon in duplicate, and cause letters patent to issue erecting the subscribers to said articles of agreement and their associates into a body corporate, with succession under the name designated in said articles of agreement, but it shall not have power to engage in the business of insurance until the provisions of this act have otherwise been complied with.[34]

2001. Recording of Articles of Association.

The Secretary of the Commonwealth shall cause the articles of agreement aforesaid, together with the proceedings had thereon and certificate to the Governor, after the approval of the Governor has been endorsed on said articles of agreement, and letters patent have been issued, to be recorded in a book kept for that purpose, and he shall return one of the said articles of agreement to the company, who shall have the same recorded in the recorder's office of the county in which said company is located. The Secretary of the Commonwealth shall furnish the Insurance Commissioner with a certified copy of said letters patent, and shall also certify the duplicate articles of agreement, with all endorsements thereon, and file the same in the office of the Insurance Commissioner; and certified copies of said records may be used in evidence for or against the company, with the same effect as the original.[35]

(34) Sec. 6, Act of June 1, 1911, P. L., 567.
(35) Sec. 7, Act of June 1, 1911, P. L., 567.

2002. Issue of Stock Certificates—Certificates of Authority.

As soon as the entire amount of the authorized capital of a company incorporated under this act has been paid in, certificates shall be issued therefor to the persons entitled to receive the same, which certificates shall be transferable at any time upon the books of the company; and the president or secretary of the company shall notify the Insurance Commissioner that the capital of the company has been paid in, and that it is ready to commence business. Upon receipt of which notice the Insurance Commissioner shall, in person, or by deputy or examiners, examine the assets of the company, and in case he finds that it is possessed of funds invested in the manner hereinafter specified, equal to the amount of its capital, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this act, and that it has the requisite amount of capital for the transaction of business in the Commonwealth, which certificate shall empower the company to issue policies, and otherwise transact the business of insurance for which it was organized.[36]

2003. Non-User of Franchises.

If any company created under this act does not commence to issue policies within one year from the date of its letters patent, or if any domestic insurance company after it has commenced to issue policies shall cease for the period of two years to make new insurances, its corporate powers and existence shall cease, and the court, upon petition of the Attorney General, may fix by decree the time within which it shall settle and close its affairs.[37]

2004. Term of Charters.

The charters for incorporation named in this act may be perpetual, or limited in time, as the articles of agreement shall specify; and the General Assembly reserves the power to revoke or annul any charter, granted or accepted under this act, whenever in the opinion of the said General Assembly it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators or their successors.[38]

(36) Sec. 8, Act of June 1, 1911, P. L., 567.
(37) Sec. 9, Act of June 1, 1911, P. L., 567.
(38) Sec. 10, Act of June 1, 1911, P. L., 567.

2005. By-Laws—Seal.

A company organized under this act shall have power to make such by-laws as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and to make and have a common seal, and change and alter the same at pleasure.[39]

2006. Annual Meetings—Election of Directors—Powers—Quorum.

The annual meeting for the election of directors shall be held at such time in the month of January as the by-laws of the company may direct; of the time and place of which meeting at least thirty days' previous notice shall be given to the stockholders, by publication not less than three times in at least two daily or weekly newspapers, and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices, published in the city or county wherein the company is domiciled. At such annual meeting the stockholders shall elect, by ballot, from their own number, not less than seven directors, a majority of whom shall be residents of this Commonwealth, to serve for one year and until their successors are duly chosen: *Provided, however,* That any company incorporated under this act, or any insurance company heretofore incorporated under any general or special law of this Commonwealth, may provide in its by-laws for the division of its board of directors into two, three, or four classes, and the election thereof, at its annual meetings, in such manner that the members of one class only shall retire and their successors be chosen each year. Vacancies may be filled by election by the board for the unexpired term. In the choice of directors, and at all meetings of the company, each share of stock shall be entitled to one vote. Proxies may be authorized by written power of attorney. The record of the votes made by the secretary, which shall show whether the same were cast in person or by proxy, shall be evidence of all such elections. If for any cause the stockholders shall fail to elect directors at any annual meeting, the directors may call a special meeting for that purpose on some subsequent day, of which notice shall be given as hereinbefore provided. The directors, before they are qualified to act, shall file with the secretary a written acceptance of the trust, and they, or a majority thereof, when statedly convened at the office of the com-

(39) Sec. 11, Act of June 1, 1911, P. L., 567.

pany, or when convened after special notice given to each member, shall be competent to exercise all the powers vested in them by law. Not less than four shall constitute a quorum. The directors shall annually choose, by ballot, a president, who shall be a member of the board; a secretary; a treasurer, who may also be either the president or secretary; and such other officers as the by-laws may provide; and they shall fix the salaries of the president and secretary, and fix the salaries or compensation of such other officers and agents as the by-laws prescribe. Vacancies in any office may be filled by the directors or by the stockholders, as the by-laws shall prescribe.[40]

2007. Execution of Policies.

Policies of insurance made or entered into by any such company may be made either with or without the seal thereof, and they shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and attested by the secretary, and when so subscribed and attested shall be obligatory on the company.[41]

2008. Minimum Paid-up Capital.

Companies organized under this act, for any one of the purposes of insurance mentioned in the first section of this act, must have a capital of not less than one hundred thousand dollars; except companies organized for the purpose of credit insurance must have a paid-up capital of not less than two hundred thousand dollars; and companies organized to guarantee the fidelity of persons and contracts of suretyship must have a capital of at least two hundred and fifty thousand dollars.[42]

2009. Additional Capital of Companies Undertaking Two or More Classes of Insurance.

Companies organized under this act may undertake two or more classes of insurance mentioned in the first section hereof, by providing for each additional class of insurance at least fifty thousand dollars additional capital; except in case credit or fidelity and surety insurance is added to any other line or lines, the additional capital for credit insurance shall be one hundred

(40) Sec. 12, Act of June 1, 1911, P. L., 567.
(41) Sec. 13, Act of June 1, 1911, P. L., 567.
(42) Sec. 14, Act of June 1, 1911, P. L., 567.

thousand dollars, and the additional capital for fidelity and surety shall be two hundred thousand dollars: *Provided,* That any such company with a paid-up capital of two hundred and fifty thousand dollars, may transact all of the classes of insurance mentioned in the first section of this act, except credit, live-stock, and fidelity and surety insurance; and a company with a paid-up capital of five hundred thousand dollars may transact all of the the classes of insurance mentioned, except the insurance of live stock.[43]

2010. Acceptance of this Act by Companies Incorporated Under the Acts of April 28, 1903, and April 29, 1874.

Companies heretofore organized under the Act of April twenty-eighth, Anno Domini one thousand nine hundred and three, having a paid-up capital of not less than one hundred thousand dollars, may issue policies providing personal accident and sickness indemnity, as specified in division two, and also an indemnity for for death arising from natural causes, for an amount not exceeding one hundred dollars; and companies heretofore organized under the act approved April twenty-nine, Anno Domini one thousand eight hundred and seventy-four, and the several supplements thereto, for the purpose of guaranteeing the fidelity of persons in positions of trust and to act as surety on official bonds, may transact business under this act, by filing with the Secretary of the Commonwealth and with the Insurance Commissioner a resolution of the board of directors, duly approved by the stockholders at a meeting specially called for that purpose, accepting the provisions of this act, and agreeing to be governed thereby as fully as though organized hereunder; and such acceptance, when so filed, shall exempt any such company from the provisions and requirements of the act approved April twenty-nine, one thousand eight hundred and seventy-four, and of the act approved May twenty-nine, one thousand eight hundred and eighty-nine, and the several supplements thereto.[44]

2011. Capital Stock of Joint-Stock Casualty Companies Heretofore Incorporated.

No joint-stock casualty insurance company heretofore organized under any law of this Commonwealth, except companies

(43) Sec. 15, Act of June 1, 1911, P. L., 567.
(44) Sec. 16, Act of June 1, 1911, P. L., 567.

organized under the Act of April twenty-eight, one thousand nine hundred and three, with a less capital than that provided herein, for the organization of such companies, shall be permitted to transact business until its capital has been increased to at least the amount required by this act: *Provided,* That companies heretofore organized, and transacting more than one class of business, shall have two years in which to comply with the provisions of this act.[45]

2012. Minimum Capital Stock of Foreign Casualty Companies.

Companies of other states and foreign governments, organized to transact any of the classes of insurance mentioned in the first section of this act, in order to be licensed to do business in this Commonwealth, must have a paid-up and safely invested capital, if a company of another state, or a deposit in the United States, if a company of a foreign government, of at least the amount required in this act for Pennsylvania companies: *Provided,* That nothing in this act shall prevent any stock life insurance company, now engaged in the business of accident and sickness or liability insurance, or both, from continuing the same, if the amount of its paid-up capital shall be equal to the amount required of a domestic company to transact the business of life insurance, and at least fifty thousand dollars for each of the other classes of insurance undertaken.[46]

2013. Investment of Capital and Funds.

Every such domestic insurance company shall invest and keep invested in sound income-bearing securities all its capital and funds of every description, excepting such cash as may be required in the transaction of its business, and such as it may invest in real estate as hereinafter authorized. The capital of every such company shall be invested as follows:

First. In such real estate as it is authorized by this act to hold.

Second. In bonds of the United States or District of Columbia, or of any state or territory of the United States.

Third. In the legally authorized bonds or notes of any city, county, township, municipality, school or water district of this Commonwealth, or of any other state or territory of the United States or Canada.

(45) Sec. 17, Act of June 1, 1911, P. L., 567.
(46) Sec. 18, Act of June 1, 1911, P. L., 567.

Fourth. In the bonds or notes of any solvent railroad or street railway corporation, upon which no default in interest has been made.

Fifth. In ground-rents and loans upon improved and unincumbered real estate: *Provided,* That no loan on such real estate shall exceed sixty-six and two-thirds per centum of the fair market value thereof at the time of making such loan.[47]

2014. Investment of Surplus—Forbidden Investments.

Any money over and above the capital of any such insurance company may be invested in the securities above enumerated, or loaned upon the security of the same; or in the stock or other evidence of indebtedness of any solvent, dividend-paying corporation, created under the laws of this Commonwealth or of any other state of the United States, or loaned upon the pledge of the same, except its own stock or the stock of any other insurance company transacting like classes of business: *Provided,* The current market value of such securities shall be at least fifteen per centum more than the sum loaned thereon. But no insurance company shall invest any of its funds in any unincorporated business or enterprise, nor in the stocks or evidence of indebtedness of any corporation the owners or holders of which stock or evidence of indebtedness may in any event be or become liable on account thereof to any assessment, except for taxes; not more than one-fifth of its capital shall be invested in a single mortgage, nor shall any of its funds be loaned on personal security. No such company shall hereafter invest in, acquire, or hold, directly or indirectly, more than ten per centum of the securities of any single company; nor shall more than ten per centum of its assets be invested in the stock of any single company. No such company shall enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its board of directors or trustees. If any investment or loan is made in a manner not authorized by this act, the officers and directors making or authorizing the same shall be personally liable for any loss occasioned thereby.[48]

(47) Sec. 19, Act of June 1, 1911, P. L., 567.
(48) Sec. 20, Act of June 1, 1911, P. L., 567.

2015. Holding of Real Estate.

No company organized under this act, and no such company heretofore incorporated under any general or special law of this Commonwealth, shall purchase, hold, or convey real estate, except for the purpose and in the manner herein set forth; to wit,—

First. Such as shall be requisite for its convenient accommodation in the transaction of its business.

Second. Such as shall have been mortgaged to it in good faith, by way of security for loans preciously contracted or for moneys due.

Third. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as shall have been purchased at sales, upon judgments, decrees, or mortgages obtained or made for debts due the company, or for debts due other persons, where said company may have liens or incumbrances on the same, and the purchase is deemed necessary to save the company from loss; and it shall not be lawful for any such company to purchase or hold real estate in any other case or for any other purpose. Any real estate purchased, received, or acquired under the second, third, fourth, paragraphs of this section, which has been held for a period of more than five years from the date of its purchase, receipt, or acquisition, must be sold and disposed of within a period of six months after due notice to the company from the Insurance Commissioner to sell and convey the same: *Provided,* That the Commissioner may extend the time for such disposition if he believes the interest of the company will suffer materially by a forced sale.[49]

2016. Dividends.

No such insurance company heretofore or hereafter organized, shall make any dividend on its capital except from the profits arising from its business; and in estimating such profits there shall first be charged as a liability the capital of the company, all unpaid losses or other loss claims, all liabilities for reserve or unearned premiums on undetermined risks as required by law; and also all sums due the company on bonds, book accounts, and judgments, on which the interest has not been paid during the last calendar year, or on the principal of which no payment has been made during said period; and all other debts or obligations

(49) Sec. 21, Act of June 1, 1911, P. L., 567.

of the company, and all shares of stock on which no dividend has been paid during the last calendar year.[50]

2017. Reduction or Withdrawal of Capital.

Any existing casualty insurance company and any company formed under this act, having a paid-up capital in excess of the minimum herein required, may reduce the excess, in whole or in part; and, when it has undertaken two or more kinds of insurance and wishes to discontinue a particular kind, may withdraw the entire additional capital paid in on account thereof; provided, in each case, that its action shall be approved by the Insurance Commissioner. Any reduction or withdrawal of capital must be authorized at a meeting of the stockholders duly called for that purpose, notice of the object and purpose of the meeting being given by advertisement for three weeks in a daily or weekly newspaper published in the city or county where the principal office of the company is located; and the company shall, by its board of directors, require the return of the original shares held by each stockholder, in exchange for new shares in the proportion that the reduced capital bears to the original capital. Whenever a company has authorized a reduction or withdrawal of capital, it shall submit to the Insurance Commissioner a statement of the transaction, signed and sworn to by its president, secretary, and a majority of its directors; and the Insurance Commissioner shall, if he finds the transaction regular in form and consistent with the interest of the policyholders and creditors, endorse his approval thereon, and file the same in the office of the Secretary of the Commonwealth, to be recorded as an amendment to the charter of the company, and thereafter the company may do business upon the reduced capital.[51]

2018. Ammendment of Charters.

Any casualty insurance company of this Commonwealth may procure an amendment to its charter by calling a special meeting of the stockholders, notice of the object of which meeting shall be given by advertisement for four weeks preceding in at least two daily or weekly newspapers, and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices, published in the city or county where the principal office of the company is located, or by circular

(50) Sec. 22, Act of June 1, 1911, P. L., 567.
(51) Sec. 23, Act of June 1, 1911, P. L., 567.

mailed to the address of each stockholder. If at such meeting two-thirds of the votes cast in person or by proxy shall favor a resolution agreeing that said company shall hold its charter subject to the provisions of the Constitution of the Commonwealth, and setting forth at length the sections of its existing charter which it desires to retain, and agreeing to be subject to the provisions of this act, said resolution and the number of votes cast for and against the same at the special meeting aforesaid shall be spread on the records of said company, and a certified copy of the same forwarded to the Insurance Commissioner, who shall submit the same to the Attorney General, and, in case he approves of said resolution, he shall certify his approval thereof to the Governor; and when approved by the Governor and recorded in the office of the Secretary of the Commonwealth, they shall be deemed and taken to form a part of the charter of said company.[52]

2019. Companies Subject to this Act.

All casualty insurance companies, heretofore or hereafter incorporated or formed by authority of any general or special law, shall be subject to the provisions and requirements of this act, except those companies incorporated under the provisions of the act approved April twenty-eighth, one thousand nine hundred and three, entitled "An act to provide for the incorporation and regulation of corporations for the purpose of making insurance on the health of individuals, and against personal injury and disablement and death, therein limiting the amount for which such corporations may issue policies, et cetera."[53]

2020. Issue and Delivery of Health and Accident Policies.

On and after the first day of January, one thousand nine hundred and twelve, no policy of insurance against loss or damage from disease or by the bodily injury by accident, or both, of the assured, shall be issued or delivered in this state: (1.) Until a copy of the form thereof and the table of rates or manual of risks of the company has been filed at least thirty (30) days with the Insurance Commissioner, unless before the expiration of said thirty (30) days the Insurance Commissioner shall have approved the same in writing; nor (2.) if the Insurance Commissioner notifies the company in writing, that in his opinion the

(52) Sec. 24, Act of June 1, 1911, P. L., 567.
(53) Sec. 25, Act of June 1, 1911, P. L., 567.

form of said policy does not comply with the requirements of the laws of this state, specifying the reasons for his opinion: *Provided,* That upon the petition of the company, the opinion of the Insurance Commissioner shall be subject to review by any court of competent jurisdiction; nor (3.) shall such policy be so issued or delivered unless every portion is plainly printed in type not smaller than long primer, or ten-point type; nor (4.) unless it contains in substance the following provisions:—

One. A provision that such policy, with a copy of the application therefor, if any, and of such other papers as may be attached to or endorsed thereon, shall constitute the entire contract of insurance, except as the same may be affected by any table of rates or classification of risks filed by the company with the Insurance Commissioner.

Two. A provision that no statement made by the applicant for insurance, which statement is not incorporated in or endorsed on the policy issued to such applicant, shall avoid the policy or be used in evidence; and no provision of the charter, constitution, or by-laws shall be used in defense of any claims arising under any such policy, unless such provisions are incorporated in full in the policy; but this requirement shall not be deemed to apply to the table of rates or manual of classification of risks of any company filed with the Insurance Commissioner prior to the date of the occurrence of the injury or commencement of the sickness for which indemnity is claimed.

Three. A provision that specifies the time within which notice of accident or disability shall be given, which time shall be not less than twenty days from the date of the accident, nor less than ten days from the date of the beginning of the disability from sickness upon which claim is based: *Provided, however,* In case of accidental death, immediate notice thereof may be required, unless the notices herein specified may be shown not to have been reasonably possible.

Four. A provision that notice of a claim for indemnity shall be deemed sufficient when given to the home office or a duly authorized agent of the company.

Five. A provision that if a past due premium shall be accepted by the company, or by a branch office, or by an authorized agent of the company in the city, town, or county in which the insured shall reside, or by the duly authorized agent of the company who accepted the last premium on the policy, if so authorized at the

time of the acceptance of the past due premium, such acceptance shall reinstate the policy in full as to disability resulting from accidental bodily injuries thereafter sustained, but shall only reinstate the policy as to disability from disease beginning more than ten days after the date of such acceptance.

Six. A provision that if the insured is injured or contracts disease after having changed his occupation to one classified by the company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified (except ordinary duties about his residence, or while engaged in recreation), the company shall pay such proportion of the indemnities provided in the policy as the premium paid would have purchased at the rate, but within the limits fixed by the company, for such more hazardous occupation, according to the company's rates and classifications of risks filed with the Insurance Commissioner in this State prior to the occurrence of the injury or the commencement of the disease for which indemnity is claimed.

Seven. A provision that the company will pay the benefits promised within sixty days of the receipt by it of due proofs of death or disability.

Eight. A provision that the policy may be cancelled at any time by the company, by written notice delivered to the insured or mailed to him at his last address as shown by the records of the company, and the tender of the company's check for the unearned premium, but that such cancellation shall be without prejudice to any claim arising on account of disability commencing prior to the date of [on] which the cancellation takes effect.

Nine. A provision that shall not limit the time within which proofs of claims shall be furnished to the company to a period less than ninety days from the date of death, dismemberment, or loss of sight, or from the termination of any other disability.[54]

2021. Prohibited Provisions in Policies.

No such policy insuring against accidental bodily injuries or disease or death shall be issued or delivered in this state if it contains in substance any of the following provisions:—

One. A provision limiting the time within which an action at law or in equity may be commenced to less than one year from the date when the final proof of claim is filed with the company.

(54) Sec. 26, Act of June 1, 1911, P. L., 567.

Two. A provision that no such policy shall authorize the deduction of any premium or assessment from any indemnity payable under the terms of the policy, except such premium or assessment as may be due or covered by written order or note at the time of payment of the indemnity.

Three. A provision limiting the amount of indemnity to be paid to a sum less than the indemnity as stated in the policy, and for which the premium has been paid: *Provided, however,* If the assured shall carry other insurance covering the same hazard without giving written notice to the companies, corporations or associations issuing the policies, then and in that case each company, corporation or association shall be liable for such proportionate amount of benefits as the indemnity promised bears to the total amount of indemnity in all the policies covering such hazard, and for the return of such part of the premium paid as shall exceed the pro rata of the premium for the benefits paid.[55]

2022. Provisions of Policies not to Conflict with this Act.

No company or agent shall issue or deliver in this state any policy which conflicts with any provision of this act. A policy issued in violation of this act shall be held valid, and shall be construed as provided in this act, and when any provision in a policy is in conflict with any provision of this act, the rights, duties and obligations of the company and policyholder and the beneficiary shall be governed by the provisions of this act.[56]

2023. Provisions in Policies of Foreign Companies.

The policies of insurance against accidental injury or disease, of a company not organized under the laws of this state, may contain any provision which the law of the state, territory or district of the United States, under which the company is organized, prescribes shall be in such policies when issued in this State; and the policies of insurance against accidental injury or disease, of a company organized under the laws of this state, may when issued or delivered in any other State or territory, district or country, contain any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in this act to the contrary notwithstanding.[57]

(55) Sec. 27, Act of June 1, 1911, P. L., 567.
(56) Sec. 28, Act of June 1, 1911, P. L., 567.
(57) Sec. 29, Act of June 1, 1911, P. L., 567.

2024. Act not to Apply to Certain Policies of Insurance.

Nothing in this act, however, shall apply to or affect any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, copartnership, association or individual employer, police or fire department, underwriter's corps, salvage bureau, or like associations or organizations, where the officers, members or employees, or classes or departments thereof, are insured against specified accidental bodily injuries or disease while exposed to the hazards of the occupation or otherwise, for a permium intended to cover the risks of all the persons insured under such policy; nor shall anything in this act apply to or affect contracts of life insurance or contracts supplemental thereto, which shall contain provisions intended to safeguard such life insurance against lapse, or that shall provide a special surrender value therefor, in the event that the insured thereunder shall by reason of accidental bodily injury or disease be unable to continue the premium payments thereon.[58]

2025. Penalty for Issuing Policies Contrary to the Provisions of this Act.

Any company, corporation, or association to which this act applies, or any officer thereof, which issues or delivers in this state, or to any citizen thereof, any accident or health policy or contract in wilful violation of the provisions of this act, shall be punished by a fine of not more than five hundred dollars ($500) for each offense; and the Insurance Commissioner may revoke the license of any foreign company, or agent thereof, which violates any provision of this act.[59]

2026. Only Corporations to Issue Policies of Casualty Insurance.

No person, partnership, or association shall issue, sign or seal, or in any manner execute, any policy of insurance, contracts of guaranty against loss by any of the casualties provided for in this act, without authority expressly conferred by a charter of incorporation given according to law: *Provided,* Nothing herein contained shall prevent anyone from becoming and being accepted as personal surety or guarantor. Any person offending against the provisions of this section, or any person who shall make, execute or issue any policy of insurance, contract, or guaranty

(58) Sec. 30, Act of June 1, 1911, P. L., 567.
(59) Sec. 31, Act of June 1, 1911, P. L., 567.

against loss by sickness, accident or other casualty, without being so authorized by law, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine not exceeding two hundred dollars to the Commonwealth, and the costs of prosecution.[60]

2027. Act not Applicable to Assessment Associations, Fraternal Benefit Societies or Beneficial Relief Associations.

This act shall not apply to assessment associations; nor to fraternal benefit societies transacting business through the lodge system, with ritualistic work and a representative government; nor to beneficial and relief associations formed by churches, societies, firms or corporations, with or without ritualistic work, the membership in which is confined to the members of such churches or societies, and to members and employees of such firms or corporations.[61]

2028. Acts Repealed.

The Act of May first, eighteen hundred and seventy-six, entitled "A supplement to an act, entitled 'An act to establish an Insurance Department,'" in so far as it applies to the incorporation and regulation of casualty insurance companies whose incorporation and regulation are provided for herein; the Act of July ninth, eighteen hundred and ninety-seven, entitled "An act to amend an act, entitled 'A supplement to an act, entitled 'An act to establish an Insurance Department,'" the Act of June fifth, eighteen hundred and eighty-three, entitled "An act to further provide for the incorporation and regulation of mutual assessment corporations," and the amendment thereto of June third, eighteen hundred and eighty-seven, and all other acts or parts of acts inconsistent herewith, are hereby repealed.[62]

2029. Incorporation of Life Insurance Companies.

Any ten or more natural persons, citizens of this Commonwealth, may associate in accordance with the provisions of this act and form an incorporated company for the following purposes:—

To insure the lives of persons, and every insurance appertaining thereto; to grant and dispose of annuities; and to insure

(60) Sec. 32, Act of June 1, 1911, P. L., 567.
(61) Sec. 33, Act of June 1, 1911, P. L., 567.
(62) Sec. 34, Act of June 1, 1911, P. L., 567.

against personal injury, disablement, or death resulting from traveling or general accidents, and against disablement resulting from sickness, and every insurance appertaining thereto.[63]

2030. Articles of Association.

Such persons shall associate by articles of agreement in writing, for the purpose of forming an insurance company, which agreement shall specify:

(a.) The name by which the company shall be known.

(b.) The class of insurance for the transaction of which it is constituted.

(c.) The plan or principle upon which the business is to be conducted.

(d.) The place in which it is to be established or located.

(e.) The amount of its capital, if any.

(f.) The general objects of the company.

(g.) The proposed duration of the company.

(h.) The powers it proposes to have and exercise.

Any name not previously in use by any existing company may be adopted, but such name must clearly designate the object and purpose of the company, and if a mutual company the word "mutual" must appear in the title thereof. The Insurance Commissioner may reject any name or title, when, in his judgment, it too closely resembles that of any existing company, or is likely to confuse or mislead the public.[64]

2031. Selection of Officers—Subscription Books—Mutual Companies.

The subscribers to said articles of agreement shall choose from their number a president, a secretary, a treasurer, and such number of directors, not less than seven, as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders or insured, as the case may be, and until their successors are duly chosen and qualified as hereinafter provided. In case a joint-stock company is to be organized, the subscribers shall open books for the subscription of stock in the company, at such times and places as they shall deem convenient and proper, and shall keep the same open until the full amount of stock specified in the articles of agreement is subscribed. In case a mutual company is to be organized, the subscribers to the ar-

(63) Sec. 1, Act of June 1, 1911, P. L., 581.
(64) Sec. 2, Act of June 1, 1911, P. L., 581.

ticles of agreement shall open books to receive applications for insurance, at convenient times and places, and keep the same open until applications for insurance have been obtained in sufficient number and amount to comply with the requirements of this act.[65]

2032. Shares of Stock in Joint-Stock Companies—Forfeiture of Partial Payments.

The capital of a joint-stock company shall be divided into shares of not less than one hundred dollars; payment of which shall be made in lawful money, ten per centum on each share at the time of subscribing, and the balance at such times as the company may direct, not exceeding nine months from the time of subscription; and the company may prescribe such rules with regard to forfeiture of partial payments on subscriptions as they may deem advisable, which rules shall be binding upon subscribers, provided they are made known at the time of subscription.[66]

2033. Certificate to Commissioner of Insurance.

Whenever one-half of the capital mentioned in said articles of agreement shall have been subscribed, and twenty per centum on each subscribed share paid into the hands of the treasurer of the company, the president, treasurer, and a majority of the directors, shall, under their respective oaths or affirmations, make a certificate to the Insurance Commissioner; stating the number and par value of the shares of stock in said company, the names and residences of the subscribers, the number of shares subscribed by each, the amount paid in on each share, the amount of money in the hands of the treasurer on account of such payments, and where the same is deposited; and whenever applications for insurance, in the case of a mutual company, shall have been obtained in sufficient number and amount, the president, treasurer, and a majority of the directors of said company, shall, under their respective oaths or affirmations, make a certificate to the Insurance Commissioner, stating the names and residences of the persons applying for insurance in said company, and the amount agreed to be taken by each.[67]

(65) Sec. 3, Act of June 1, 1911, P. L., 581.
(66) Sec. 4, Act of June 1, 1911, P. L., 581.
(67) Sec. 5, Act of June 1, 1911, P. L., 581.

2034. Acknowledgment of Articles of Association—Approval Thereof—Letters Patent.

The subscribers to said articles of agreement shall acknowledge the same before some person empowered to receive acknowledgment of deeds, and forward the same, in duplicate, to the Insurance Commissioner, who shall, in case he approves of the title of the proposed company, certify in duplicate that all the requirements of this act in relation to the incorporation of insurance companies have been complied with, and submit said articles of agreement to the Attorney General for examination; and if found by him to be in accordance with the provisions of this act, and not inconsistent with the Constitution of this Commonwealth and of the United States, he shall certify the same, in duplicate, to the Governor, with his approval endorsed thereon. Upon receipt of such articles of agreement, certified as aforesaid, the Governor shall, in case he approves the same, endorse his approval thereon in duplicate, and cause letters patent to issue, erecting the subscribers to said articles of agreement and their associates into a body corporate, with succession under the name designated in said articles of agreement, but it shall not have power to engage in the business of insurance until the provisions of this act have otherwise been complied with.[68]

2035. Recording of Articles of Association.

The Secretary of the Commonwealth shall cause the articles of agreement aforesaid, together with the proceedings had thereon, and certificate to the Governor, after the approval of the Governor has been endorsed on said articles of agreement, and letters patent have been issued, to be recorded in a book kept for that purpose; and he shall return one of the said articles of agreement to the company, who shall have the same recorded in the recorder's office of the county in which the said company is located. The Secretary of the Commonwealth shall furnish the Insurance Commissioner with a certified copy of said letters patent; and shall also certify the duplicate articles of agreement, with all endorsements thereon, and file the same in the office of the Insurance Commissioner; and certified copies of the same may be used in evidence for or against the company, with the same effect as the original.[69]

(68) Sec. 6, Act of June 1, 1911, P. L., 581.
(69) Sec. 7, Act of June 1, 1911, P. L., 581.

2036. Issue of Stock Certificates—Certificates of Authority.

As soon as the entire amount of the authorized capital of a joint-stock company, incorporated under this act, has been paid in, certificates shall be issued therefor to the persons entitled to receive the same, which certificates shall be transferable at any time upon the books of the company; and the president or secretary of the company shall notify the Insurance Commissioner that the capital of the company has been paid in, and that it is ready to commence business. Upon receipt of which notice the Insurance Commissioner shall, in person, or by deputy or examiners, examine the company; and in case he finds that it has complied with the provisions of this act, and is possessed of funds, invested in the manner hereinafter specified, equal to the amount of its capital, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this act, and that it has the requisite amount of capital for the transaction of business in the Commonwealth, which certificate shall empower the company to issue policies, otherwise transact the business of insurance for which it was organized.[70]

2037. Non-User of Franchises.

If any company created under this act does not commence to issue policies within one year from the date of its letters patent, its corporate powers and existence shall cease; and the court, upon petition of the Attorney General, may fix by decree the time within which it shall settle and close its affairs.[71]

2038. Term of Charters.

The charters for incorporation named in this act may be perpetual or limited in time, as the articles of agreement shall specify; and the General Assembly reserves the power to revoke or annul any charter, granted or accepted under this act, whenever, in the opinion of the said General Assembly, it may be injurious to the citizens of this Commonwealth; in such manner, however, that no injustice shall be done to the incorporators or their successors.[72]

2039. By-Laws—Seal.

Companies organized under this act shall have power to make such by-laws as may be deemed necessary for the government of

(70) Sec. 8, Act of June 1, 1911, P. L., 581.
(71) Sec. 9, Act of June 1, 1911, P. L., 581.
(72) Sec. 10, Act of June 1, 1911, P. L., 581.

its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and to make and have a common seal and change and alter the same at their pleasure.[72]

2040. Annual Meetings—Election of Directors—Powers—Quorum.

The annual meeting for the election of directors shall be held at such time in the month of January as the by-laws of the company may direct; of the time and place of which meeting at least thirty days' previous notice shall be given to the stockholders or members, by publication not less than three times each in at least two daily or weekly newspapers, and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices published in the city or county wherein the company is domiciled. At such annual meeting the stockholders or members shall elect by ballot, from their own number, not less than seven directors, a majority of whom shall be residents of this Commonwealth, to serve for one year and until their successors are duly chosen: *Provided, however,* That any company incorporated under this act, or any such insurance company heretofore incorporated under any general or special laws of this Commonwealth, may provide in its by-laws for the division of its board of directors or trustees into two, three, or four classes, and the election thereof at its annual meetings in such manner that the members of one class only shall retire, and their successors be chosen, each year. Vacancies may be filled by election by the board for the unexpired term. In the choice of directors or trustees, and at all meetings of the company, each share of stock in a joint-stock company, and each member in a mutual company, shall be entitled to one vote. Proxies may be authorized by written power of attorney. The record of the votes made by the secretary, which shall show whether the same were cast in person or by proxy, shall be evidence of all such elections. If, for any cause, the stockholders or members shall fail to elect directors or trustees at any annual meeting, the directors or trustees may call a special meeting for that purpose, on some subsequent day, of which notice shall be given as hereinbefore provided. The directors or trustees, before they are qualified to act, shall file with the secretary a written acceptance of the trust; and they, or a majority thereof, when statedly convened at the office of the company, or when convened after special notice

(73) Sec. 11, Act of June 1, 1911, P. L., 581.

given to each member, shall be competent to exercise all the powers vested in them by law. Not less than four shall constitute a quorum. The directors or trustees shall annually choose, by ballot, a president, who shall be a member of the board, a secretary, a treasurer, who may also be either the president or secretary, and such other officers as the by-laws may provide; and they shall fix the salaries of the president and secretary, and fix the salaries or compensation of such other officers and agents as the by-laws prescribe. Vacancies in any office may be filled by the directors or trustees, or by the stockholders or members, as the by-laws shall prescribe.[74]

2041. Execution of Policies.

Policies of insurance, made or entered into by any company, may be made either with or without the seal thereof, and they shall be subscribed by the president, or such other officer as may be designated by the directors or trustees for that purpose, and attested by the secretary or other designated officer, and when so subscribed and attested shall be obligatory on the company.[75]

2042. Minimum Paid-up Capital—Acceptance of Act.

Joint-stock companies, organized under this act to insure lives, must either have a capital of not less than two hundred thousand dollars, or a capital of one hundred thousand dollars, and, in addition thereto, a net surplus of not less than two hundred thousand dollars. Joint-stock companies organized to insure lives, and also to insure against personal accident and sickness, must have a capital of at least three hundred thousand dollars. Companies organized to insure lives on the mutual plan must have applications for insurance to the amount of one million dollars, by not less than four hundred persons. Companies heretofore organized in this Commonwealth to insure lives may also insure against disability, accident, and sickness; and companies heretofore organized under the provisions of the act of April twenty-eighth, one thousand nine hundred and three, having a capital of not less than three hundred thousand dollars, may be authorized to transact life insurance and personal accident and sickness, as specified in section one of this act, by filing with the Insurance Commissioner a resolution of the board of

(74) Sec. 12, Act of June 1, 1911, P. L., 581.
(75) Sec. 13, Act of June 1, 1911, P. L., 581.

directors or trustees, duly approved by the stockholders or members at a meeting specially called for that purpose, accepting the provisions of this act, and agreeing to be governed thereby as fully as though organized hereunder.[76]

2043. Minimum Paid-up Capital of Foreign Companies.

Companies of other states and foreign governments to insure lives, in order to be licensed to do business in this Commonwealth, must have a paid up and safely invested capital, if a company of another state, or a deposit in the United States, if a company of a foreign government, of not less than the amount required herein for domestic companies. Mutual companies, organized under the laws of any other of the United States, for the transaction of life insurance, may be admitted to do business in this Commonwealth if it has the requisite funds of a life insurance company, and, in the opinion of the Commissioner, is in sound financial condition, and has policies in force upon not less than five hundred lives, for an aggregate amount of not less than one million dollars: *Provided,* That any company licensed to transact business in this state at the time of the passage of this act, having less capital or assets than that required herein for domestic companies, may be licensed so long as, in the opinion of the Commissioner, it is in a sound financial condition and otherwise complies with all requirements of law.[77]

2044. Investment of a Sum Equal to Capital and Reserves.

A sum equal to the capital and reserves of any life insurance company organized under the laws of this Commonwealth shall be invested as follows:—

One.—In such real estate as it is authorized by this act to hold.

Two.—In bonds of the United States or District of Columbia, or of any state or territory of the United States.

Three.—In legally authorized bonds, notes, warrants, or obligations of any city, town, county, borough, township, municipality, school district, or water, sewer, drainage, road, or other governmental district or division, located in this Commonwealth or in any state of the United States.

(76) Sec. 14, Act of June 1, 1911, P. L., 581.

(77) Sec. 15, Act of June 1, 1911, P. L., 581.

Four.—In ground-rents and in loans upon unincumbered real estate in any state of the United States, or the District of Columbia: *Provided,* That no loan shall exceed sixty per centum of the fair market value thereof at the time of such loan.

Five.—In loans upon the security of its own policies, not exceeding the net value of the policy at the time of making the loan.

Six.—In first encumbrances upon standard steam railroads, street or interurban railways, or upon their rolling-stock equipment; or of water, gas, or other public utilities companies; or bonds issued to retire a prior debt, or bonds prior thereto, or in other bonds or notes of the above named corporations upon which no default in interest exists at the time of purchase: *Provided, however,* That the Insurance Commissioner may permit any company to invest sufficient of its capital and funds in the securities of a foreign government in order to enable it to comply with the laws of such foreign government and transact business therein: *And provided, further,* That this section shall not be so construed as to require any life insurance company heretofore organized under the laws of this Commonwealth, and now transacting business herein, to dispose of any securities or investments legally acquired; and nothing herein contained shall be so construed as to prevent any such company from acquiring or holding property taken in reorganization or foreclosure proceedings, or which may be obtained in satisfaction of any debt previously contracted.[78]

2045. Investment of Surplus—Forbidden Investments.

Any money, over and above the capital and reserves of any such insurance company, may be invested in the securities above enumerated; in first encumbrances upon street or interurban railways, or of water, gas, or other public utility companies; or in the standard and listed stock, or other evidences of indebtedness, of any solvent dividend-paying corporation, created under the laws of this Commonwealth or of any other state of the United States; or loaned upon the pledge of the same, except its own stock or the stock of any other insurance company transacting like classes of business: *Provided,* The current market value of such securities shall be at least twenty per centum more than the sum loaned thereon. But no such insurance company

(78) Sec. 16, Act of June 1, 1911, P. L., 581.

shall invest any of its funds in any unincorporated business or enterprise; nor in the stocks or evidences of indebtedness of any corporation, the owners or holders of which stock or evidences of indebtedness may, in any event, be or become liable on account thereof to any assessment, except for taxes. Not more than one-fifth of its capital shall be invested in a single mortgage, nor shall any of its funds be loaned on personal security. No such company shall hereafter invest or acquire, directly or indirectly, more than ten per centum of the capital stock of any corporation; nor shall more than ten per centum of its capital and surplus be invested in the stock of any corporation. No such company shall enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors or trustees. If any investment or loan is made in a manner not authorized by this act, the officers and directors making or authorizing the same shall be personally liable for any loss occasioned thereby.[79]

2046. Holding of Real Estate.

The real estate which it shall be lawful for any life insurance company, heretofore incorporated under any general or special law of this Commonwealth, or hereafter incorporated under this act, to purchase, receive, hold, and convey shall be:

One.—Such as shall be requisite for its immediate accommodation in the convenient transaction of business.

Two.—Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted for, or for moneys due.

Three.—Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Four.—Such as shall be purchased at sales upon judgments, decrees, or mortgages, obtained or made for debts due said company, or for debts due other persons, where said company may have liens or encumbrances on the same, and the purchase is deemed necessary to save the company from loss: *Provided*, That whenever such company shall have the power of receiving and executing trusts, it shall be and is hereby authorized and empowered to take, receive, and hold all estates and property,

(79) Sec. 17, Act of June 1, 1911, P. L., 581.

real and personal, which may be granted, committed, transferred, or conveyed to it, with its consent, upon any trust or trusts whatsoever, at any time or times, by any person, persons, body or bodies corporate, or by any court of the United States or of this state, and to administer, fulfill, and discharge the duties of such trusts.[80]

2047. Official Perquisites Forbidden.

No director, trustee, or officer of any life insurance company, incorporated under any law of this Commonwealth, shall receive any money or valuable thing for negotiating, procuring, recommending, or aiding in any purchase by or sale to such company of any property, or any loan from such company; nor be directly or indirectly pecuniarily interested, either as principal, co-principal, agent, or beneficiary, in any such purchase, sale or transaction: *Provided,* That nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by the borrower, not in excess of the cash value thereof. Any person wilfully violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined five hundred dollars.[81]

2048. Dividends.

No life insurance company, heretofore or hereafter organized in this Commonwealth, shall make any dividend on its capital except from the profits arising from its business; and, in estimating such profits, there shall be first charged as a liability the capital of the company, all unpaid losses or other claims, all liabilities for reserve as required by law, and also all sums due the company on bonds and mortgages, stocks, and book accounts, of which no part of the principal or the interest thereon has been paid during the last calendar year, and for which the foreclosure or suit has not been commenced for collection, or which after judgment obtained thereon shall have remained more than two years unsatisfied, and on which interest shall not have been paid, and also all interest due or accrued and remaining unpaid, and all other debts or obligations of the company.[82]

(80) Sec. 18, Act of June 1, 1911, P. L., 581.
(81) Sec. 19, Act of June 1, 1911, P. L., 581.
(82) Sec. 20, Act of June 1, 1911, P. L., 581.

2049. Minimum Guarantee Capital of Mutual Insurance Companies —Cerificate to Insurance Commissioner—Letters Patent—Certificate of Authority.

Companies organized to insure lives on the mutual plan must have a guarantee capital, before commencing business, of not less than two hundred thousand dollars, fifty per centum of which shall be paid in cash before commencing business. Said companies shall be organized by articles of agreement, as hereinbefore prescribed; and the subscribers to said articles of agreement shall open books to receive subscriptions to the guarantee capital, as provided in the case of joint-stock companies. As soon as the entire amount of said guarantee capital has been subscribed, and fifty per centum thereof paid in lawful money to the treasurer, and the subscribers' obligations given for the remaining fifty per centum thereof, the president, treasurer, and a majority of the directors, shall, under their respective oaths or affirmations, make a certificate to the Insurance Commissioner, stating the number and par value of the shares of guarantee stock in said company, the name and residence of the subscribers, the number of shares subscribed by each, the amount paid in on each share, the form of obligation taken for the unpaid moiety, the amount of money in the hands of the treasurer, and where the same is deposited; and the Governor shall, in the same form and under the same conditions as prescribed in this act for joint-stock companies, erect said subscribers and their associates into a body corporate, with succession; and thereupon the Insurance Commissioner shall make an examination, and if he finds that the necessary amount of insurance has been applied for, and that fifty per centum of the guarantee capital has been paid in and invested, less the necessary expenses of organization, he shall issue a certificate authorizing the company to commence business.[83]

2050. Mutual Life Insurance Companies—Notes for Unpaid Moiety of Guarantee Capital—Assessments—Disposition of Excess of Profits.

Every person subscribing to the guarantee capital of any mutual company, organized under this act, shall give to said company his note or obligation, in such form as the by-laws of the company may prescribe, for the unpaid moiety of the guarantee capital so subscribed, which note or obligation shall be liable to

(83) Sec. 21, Act of June 1, 1911, P. L., 581.

assessment or assessments, from time to time, as may be deemed necessary by the directors of said company, for the successful prosecution of its business; and such assessments may be made, to meet the losses, expenses, insurance reserve, and other obligations of such company, until the whole amount of such note or obligation shall be paid. All assessments shall be made pro rata upon the entire amount of unpaid subscriptions, and the same shall be collected by suit at law as other debts of like character are collectible. The subscribers to the guarantee capital shall be entitled to receive from such company interest, payable semi-annually, at such rate, not exceeding six per centum, as may be agreed upon at the time of subscribing, if the net surplus over a requisite reservation for liabilities and contingencies is sufficient to pay the same, and, if less than the sum originally agreed on, it shall be made equal to it when the profits of the company are sufficient. Whenever the lawful invested assets of such company shall exceed the reserve and other liabilities to an amount equal to the amount of the guarantee capital subscribed, the directors, at their option, may retire or return all or such portion of the guarantee capital to the subscribers as the interest of the company may warrant; but no sum in cash shall be returned exceeding that actually paid in, with the interest due and unpaid.[84]

2051. Companies Without Capital Stock May Maintain a Surplus or Safety Fund.

Any life insurance company without capital stock incorporated under the laws of this Commonwealth and transacting business therein, may establish and maintain, or, if already established, may continue to maintain, a surplus or safety fund to an amount not in excess of ten per centum of its reserve, or one hundred thousand dollars, whichever is greater, and the excess of the market value of its securities over their book value: *Provided,* That in cases where the surplus or safety fund at present existing, exclusive of all accumulations held on account of the outstanding deferred dividend policies, exceeds the limit above designated, the company shall be entitled to retain said surplus or safety fund, but shall not be entitled to add thereto so long as it exceeds said limit: *And provided,* That, for cause shown, the Insurance Commissioner may at any time, and from time to time, permit any corporation to accumulate and maintain a sur-

(84) Sec. 22, Act of June 1, 1911, P. L., 581.

plus or safety fund in excess of the limit above mentioned, for a prescribed period, not exceeding one year in any one permission, by filing in his office a decision stating his reasons therefor, and causing the same to be published in his next annual report.[85]

2052. Amendment of Charters.

Any life insurance company of this Commonwealth may procure an amendment to its charter by calling a special meeting of the stockholders, notice of the object of which meeting shall be given, by advertisement for four weeks preceding, in at least two daily or weekly newspapers and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices, published in the city or county where the principal office of the company is located, or by circular mailed to the address of each stockholder. If at such meeting two-thirds of the votes, cast in person or by proxy, shall favor a resolution agreeing that said company shall hold its charter subject to the provisions of the Constitution of the Commonwealth, and setting forth at legnth the sections of its existing charter which it desires to retain, and agreeing to be subject to the provisions of this act, said resolution and the number of votes cast for and against the same at the special meeting aforesaid shall be spread on the records of said company, and a certified copy of the same forwarded to the Insurance Commissioner, who shall submit the same to the Attorney General, and, in case he approves of said resolution, he shall certify his approval thereof to the Governor, and when approved by the Governor and recorded in the office of the Secretary of the Commonwealth, they shall be deemed and taken to form part of the charter of said company.[86]

2053. Copies of Forms of Policies to be Filed with Insurance Commissioner—Requirements as to Provisions in Policies.

On and after January first, nineteen hundred and twelve, no policy of life or endowment insurance shall be issued or delivered in this Commonwealth, unless and until a copy of the form thereof has been filed with the Insurance Commissioner; nor if the Insurance Commissioner notifies the company, in writing, that in his opinion the form of said policy does not comply with the

(85) Sec. 23, Act of June 1, 1911, P. L., 581.
(86) Sec. 24, Act of June 1, 1911, P. L., 581.

requirements of the laws of this Commonwealth, specifying the reasons for his opinion: *Provided,* That this action of the Insurance Commissioner shall be subject to review by any court having jurisdiction. Nor shall any such policy, except policies of industrial insurance, where the premiums are payable monthly or oftener, be issued or delivered unless it contains in substance the following provisions:—

First.—A provision that all premiums shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers of the company, who shall be named in the policy.

Second.—A provision that the insured is entitled to a grace, either of thirty days or one month, within which the payment of any premium after the first year may be made, subject, at the option of the company, to an interest charge not in excess of six per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force; but in case the policy becomes a claim during the said period of grace, before the overdue premium, or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, with interest on any overdue premium, may be deducted in any settlement under the policy.

Third.—A provision that the policy shall be incontestible after not more than two years from its date of issue, except for nonpayment of premiums, and for engaging in military or naval service in time of war without the consent in writing of an executive officer of the company.

Fourth.—A provision that the policy shall constitute the entire contract between the parties; but if the company desires to make the application a part of the contract, it may do so, provided a copy of such application shall be endorsed upon or attached to the policy when issued, and in such case the policy shall contain a provision that the policy and the application therefor shall constitute the entire contract between the parties.

Fifth.—A provision that, if the age of the insured has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age.

Sixth.—A provision that the policy shall participate in the surplus of the company, and that, beginning not later than the end of the third policy-year, the company will annually determine

the portion of the divisible surplus accruing on the policy, and that the owner of the policy shall have the right to have the dividend arising from such participation paid in cash, or applied to the payment of premiums, or the purchase of paid up additions to the policy, as the policyholder may elect.

In lieu of the foregoing provision, the policy may contain a provision that the policy shall participate in the surplus of the company, and that beginning not later than the end of the tenth policy-year, the company will determine the portion of the divisible surplus accruing on the policy, and that the owner of the policy shall have the right to have the current dividend arising from such participation paid in cash, and that at periods of not more than five years, thereafter, such apportionment and payment, at the option of the policyholder, shall be had.

Renewable term policies of ten years or less may provide that the surplus accruing to such policies shall be determined and apportioned each year after the second policy-year, and accumulated during each renewal period, and that at the end of any renewal period, or renewal of the policy by the insured, the company shall apply the accumlated surplus as an annuity for the next succeeding renewal term in the reduction of premiums.

Seventh.—A provision specifying the options to which the policyholder is entitled, in the event of default in a premium payment after three full annual premiums shall have been paid.

Eighth.—A provision that after three full years' premiums have been paid the company, at any time while the policy is in force, will advance on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to or, at the option of the owner of the policy, less than the reserve at the end of the current policy-year on the policy, and on any dividend additions thereto, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy, and any unpaid balance of the premium for the current policy-year, and may collect interest in advance on the loan to the end of the current policy-year; which provision may further provide, that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than two

and one-half per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the entire reserve may be deducted in case of a loan under the policy; or may provide therein that the deduction may be the said two and one-half per centum, or the one-fifth of the said entire reserve, at the option of the company.

Ninth.—A provision which, in event of default in premium payments after premiums shall have been paid for three years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserves, less a sum not more than two and one-half per centum of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provision shall stipulate that the policy may be surrendered to the company at its home office, within one month from date of default, for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid, and may stipulate that the company may defer payment for not more than six (6) months after the application therefor is made. This provision shall not be required in terms insurance of twenty years or less.

Tenth.—A table showing in figures the loan value, if any, and the options available under the policy, each year, upon default in premium payments, during at least the first twenty years of the policy; and, if the proceeds of a policy are payable in installments or as an annuity, a table showing the amount of the installment or annuity payments.

Eleventh.—A provision that the holder of a policy shall be entitled to have the policy reinstated, at any time within three years from the date of default in premium payments, unless the cash surrender value has been duly paid or the extension period expired, upon the production of evidence of insurability satisfactory to the company, and the payment of all overdue premiums and any other indebtedness to the company upon said policy, with interest at the rate of not exceeding six per centum per annum.

Twelfth.—A provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death.

Any of the foregoing provisions, or parts thereof, not applicable to single premium or non-participating or term policies, shall, to that extent, not be incorporated therein, and paragraph eight shall not apply to companies of other states and foreign governments: *Provided, however,* That the policies of a life insurance company organized under the laws of any other state or foreign government may contain, when issued in this Commonwealth, any provision which may be prescribed by the laws of the state or government under which the company is organized; and the policies of a life insurance company, organized under the laws of this Commonwealth, may, when issued in any other state, territory, or foreign country, contain any provision required by the laws of such state, territory, or foreign country to be contained in policies issued therein.[87]

2054. Provisions Which May Not be Contained in Policies of Life Insurance Except in Policies of Industrial Insurance.

No policy of life insurance shall be issued or delivered in this Commonwealth, or be issued by any life insurance company organized under the laws of this Commonwealth, except policies of industrial insurance where the premiums are payable monthly or oftener, if it contain any of the following provisions:

A.—Any provision for forfeiture of the policy for failure to repay any loan on the policy or to pay interest on any such loan, while the total indebtedness on the policy is less than the cash value thereof. In ascertaining the indebtedness due upon the policy loan, the interest, if not paid when due, shall be added to the principal of such loan, and shall bear interest at the rate specified in the note or loan agreement.

B.—Any provision limiting the time, within which any action at law or in equity may be commenced, to less than two years after the cause of action shall accrue.

C.—Any provision by which the policy shall purport to be issued or to take effect more than six months before the original application for the insurance was made.

D.—Any provision for a mode of settlement, at maturity, of less value than the amount insured on the face of the policy, plus dividend additions, if any, less the indebtedness to the company on the policy, and less any premiums that may by the terms of the policy be deducted.[88]

(87) Sec. 25, Act of June 1, 1911, P. L., 581.
(88) Sec. 26, Act of June 1, 1911, P. L., 581.

2055. Policies for the Benefit of Married Women to Inure Solely to Them and Their Children.

A policy of insurance issued by any company, heretofore or hereafter incorporated, on the life of any person, expressed to be for the benefit of any married woman, whether procured by herself, her husband, or any other person, shall inure to her separate use and benefit, and that of her children, independently of her husband or his creditors, or the person effecting the same or his creditors. If the premium is paid by any person with intent to defraud his creditors, an amount equal to the premium so paid, with interest thereon, shall inure to their benefit.[89]

2056. Who May Cause the Lives of Others to be Insured—Insurance of Husband or Father for the Benefit of Wife or Children.

No policy or agreement for insurance shall be issued upon the life of another, except upon the application of the person insued; but a married woman, either in her own name or in the name of a third person as trustee, may cause to be insured the life or health of her husband, for any definite period or for the term of life, and the moneys that may become payable on the contract of insurance shall be payable to her, her representatives or assigns, free from the claims of the representatives of the husband or of any of his creditors. A person liable for the support of a child may take a policy of insurance thereon; and a firm or corporation may take insurance upon its members and its officers and directors, and upon its employes, and for pension and relief fund purposes. Any husband may insure his life or health for the benefit of his wife, and any father may insure his life or health for the benefit of his children, or of any one or more of them; and in case any money becomes payable under the insurance, the same shall be payable to the person or persons for whose benefit the insurance was procured, his, her, or their representatives or assigns, for his, her, or their own use and benefit, free from all representatives of such husband or father or of any of his creditors. If the premium is paid by any person, with intent to defraud his creditors, an amount equal to the premiums so paid, with interest thereon, shall inure to their benefit.[90]

(89) Sec. 27, Act of June 1, 1911, P. L., 581.

(90) Sec. 28, Act of June 1, 1911, P. L., 581.

2057. False Representations by Life Insurance Companies—Penalty.

No life insurance company doing business in this Commonwealth, or agent thereof, shall state or represent by advertisement in any newspaper, periodical, or magazine, or by any sign, circular, card, policy of insurance or certificate of renewal thereof, or otherwise, that any funds or assets are in possession of any such company not actually possessed by it, and available for the payment of losses and claims and held for the protection of its policyholders or creditors; and no such company, officer, director, trustee, or agent thereof, or any other person, copartnership, or corporation, shall issue any illustration, circular, or statement of any sort, misrepresenting the terms of any policy issued by it, or the benefits or advantages promised thereby, or any estimate of the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies, misrepresenting the true nature thereof; nor shall any such company or agent thereof, or any other person, copartnership, or corporation, make any misleading representations or incomplete comparison of policies or contracts issued or to be issued to any person insured in another company, for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender his said existing insurance. Any violation of this section shall constitute a misdemeanor; and any person, corporation, or copartnership, upon conviction of violating the same, shall be subject to a fine not exceeding five hundred dollars ($500.00), and an imprisonment of six (6) months, or either or both, at the discretion of the court; and it shall be the duty of the Insurance Commissioner to revoke the license of the company or copartnership or person so offending.[91]

2058. Life Insurance May be Written Only by Corporations.

The business of insuring lives within this Commonwealth by any private individual association or partnership is hereby wholly prohibited; and any person who shall solicit or obtain, within this Commonwealth, applications for insurance upon lives by any such private individual association or partnership, contrary to the provisions of this act, shall be liable to a penalty of one hundred dollars for every application obtained, to be sued for and recovered by the Attorney General, or district attorney of the proper

(91) Sec. 29, Act of June 1, 1911, P. L., 581.

county, either by action of debt or criminal prosecution; and any person who shall have paid to any agent of such unauthorized individual association or partnership any premium moneys for insurance granted, or to be granted, shall be entitled to recover the same from such agent, or from the person, association, or partnership for which he acted, by an action at law.[92]

2059. Salaries of Officers and Employes of Domestic Companies.

No domestic life insurance company shall pay any salary, compensation, or emolument to any officer, trustee, or director thereof, nor any salary, compensation, or emolument, except commissions accruing on agents' contracts, amounting in any year to more than five thousand dollars, to any person, firm, or corporation, unless such payment be first authorized by a vote of the board of directors of such life insurance company. No such life insurance company shall make any agreement with any of its officers, directors, trustees, or salaried employees whereby it agrees that, for any services rendered or to be rendered, he shall receive any salary, compensation, or emolument that will extend beyond a period of twelve months from the date of such agreement; and no officer who is paid a salary for his services of more than one hundred dollars per month shall receive any other compensation or emolument, nor shall any director or trustee receive any compensation or emolument, except fees for attendance at committee and board meetings:

Provided, That the limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions.[93]

2060. Disbursements of Domestic Companies to be Evidenced by Vouchers.

No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher, signed by or on behalf of the person, firm, or corporation receiving the money, and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the services rendered and an itemized statement of the disbursements

(92) Sec. 30, Act of June 1, 1911, P. L., 581.
(93) Sec. 31, Act of June 1, 1911, P. L., 581.

made. If the expenditure be in connection with any matter pending before any legislative or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by an affidavit describing the character and object of the expenditure, and stating the reason for not obtaining such voucher.[94]

2061. Minors of Eighteen Years of Age May Become Members of Mutual Companies.

From and after the passage of this act, it shall be lawful for minors, who have attained the age of eighteen years, to make all needful contracts to become members of mutual life insurance companies, organized and doing business under the laws of this Commonwealth.[95]

2062. Act Not to Apply to Fraternal Beneficial Associations, Assessment Life Insurance Companies, nor to Beneficial or Relief Associations.

This act shall not apply to fraternal beneficial societies or associations that provide aid for the family or heirs of a deceased member; nor to assessment life insurance companies; nor to beneficial or relief societies formed by churches, societies, firms, or corporations, the privileges and membership in which are confined to the members of such churches or societies, and to the members and employes of such firms or corporations.[96]

2063. Acts Repealed.

The act of May first, eighteen hundred and seventy-six, entitled "A supplement to an act, entitled 'An act to establish an Insurance Department,'" in so far as it applies to the incorporation and regulation of life insurance companies whose incorporation and regulation are provided for herein; the act of April twenty-eight, one thousand nine hundred and three, entitled "An act to provide for the incorporation and regulation of corporations for the purpose of making insurance upon the health of individuals, et cetera;" the act of June fifth, one thousand eight hundred and eighty-three, entitled "An act to further provide for the in-

(94) Sec. 32, Act of June 1, 1911, P. L., 581.
(95) Sec. 33, Act of June 1, 1911, P. L., 581.
(96) Sec. 34, Act of June 1, 1911, P. L., 581.

corporation and regulation of mutual assessment corporations for the insurance of lives," and the amendments thereto of June third, one thousand eight hundred and eighty-seven; the act of June twenty-third, one thousand eight hundred and eighty-five, entitled "An act relating to warranties in the application for life insurance policies," and all other acts or parts of acts inconsistent herewith, are hereby repealed.[97]

2064. Proceedings by Insurance Commissioner Against Insolvent or Delinquent Companies—Application to Court to Show Cause.

Whenever any domestic insurance company, association, society, or order, including all corporations, associations, societies, and orders which are subject to examination by the Insurance Commissioner, or which are doing or attempting to do, or representing that they are doing, the business of insurance in this Commonwealth; or which are in process of organization intending to do such business therein,—(a) is insolvent; or, (b) has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Insurance Commissioner, or his deputy or examiner; or (c) has neglected or refused to observe an order of the Commissioner to make good within the time prescribed by law any deficiency, whenever its capital, if it be a stock corporation, or its reserve, if it be a mutual corporation, shall have become impaired; or (d) has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other corporation, association, society, or order, without having first obtained the written approval of the Insurance Commissioner; or (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or (f) has wilfully violated its charter or any law of the Commonwealth; or (g) whenever any officer thereof has refused to be examined under oath touching its affairs,—the Insurance Commissioner may, through the Attorney General, apply to the court of common pleas of Dauphin County, or to the court of any county in which the principal office of such corporation is located, for an order directing such corporation to

(97) Sec. 35, Act of June 1, 1911, P. L., 581.

show cause why the Insurance Commissioner should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require.[98]

2065. Action by Court.

On such application, or at any time thereafter, such court may, in its discretion, issure an injunction restraining such corporation from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the Insurance Commissioner forthwith to take possession of the property and conduct the business of such corporation, and retain such possession and conduct such business until, on the application either of the Commissioner, through the Attorney General, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the Insurance Commissioner to take possession has been removed, and that the corporation can properly resume possession of its property and the conduct of its business.[99]

2066. Liquidation—Dissolution.

If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such corporation, such liquidation shall be made by and under the direction of the Insurance Commissioner, who shall be vested by operation of law with title to all of the property, contracts, and rights of action of such corporation as of the date of the order so directing him to liquidate. The filing or recording of such order in any record office of the state shall impart the same notice that a deed, bill of sale, or other evidence of title, duly filed or recorded by such corporation, would have imparted. The order of liquidation shall, unless otherwise directed by the court, provide that the dissolution of the corporation shall take effect upon the entry of such order in the office of the clerk of the county wherein such corporation had its principal office for the transaction of business.[100]

(98) Sec. 1, Act of June 1, 1911, P. L., 599.
(99) Sec. 2, Act of June 1, 1911, P. L., 599.
(100) Sec. 3, Act of June 1, 1911, P. L., 599.

2067. Appointment of Special Deputy Insurance Commissioners—Powers—Counsel—Compensation.

For the purposes of this act, the Insurance Commissioner shall have power to appoint, under his hand and official seal, one or more special deputy commissioners, as his agent or agents, and to employ such clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise; and the Attorney General shall appoint the attorneys or counsel necessary to advise the said Insurance Commissioner, or his deputies, in each particular case. The compensation of such special deputy commissioners, counsel, clerks, and assistants, and all expenses of taking possession of and conducting the business of liquidating any such corporation, shall be fixed by the Commissioner, subject to the approval of the court, and shall, on certificate of the Commissioner, be paid out of the funds or assets of such corporation. During the progress of any proceedings taken under this section, the Commissioner, his deputies or any examiner authorized by him, and the special deputy commissioner acting for the said Commissioner therein, shall have all of the powers given to the Commissioner, his deputy, or any examiner authorized by him, by the laws of this Commonwealth, including the power to examine under oath the officers and agents of such corporation and all persons deemed to have material information regarding the company's property or business, and to compel the production of all books and papers.[1]

2068. Report to Legislature of Names of Companies Taken Possession of by Insurance Commissioner.

The Insurance Commissioner shall transmit to the Legislature, in his annual report, the names of the corporations so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders, and the public with his proceedings under this act; and, to that end, the special deputy commissioner in charge of any such corporation shall file with the Commissioner a report of the affairs of such corporation.[2]

2069. Service of Order to Show Cause.

The order to show cause, and the papers upon which the same is made in any proceeding instituted under the provisions of this

(1) Sec. 4, Act of June 1, 1911, P. L., 599.
(2) Sec. 5, Act of June 1, 1911, P. L., 599.

act, shall be served upon the corporation named in such order in the manner prescribed, for personal service of summons upon a domestic corporation, by the laws of this Commonwealth. When it is satisfactorily proved by affidavit that the officers of the corporation named in the said order to show cause, upon whom service is required to be made as above provided, shall have departed from the state, or keep themselves concealed therein with intent to avoid service, such order to show cause may provide for service thereof in such manner as the court or judge by whom the same is made shall direct.[3]

2070. Filing of Account by Commissioner After Liquidation—Exceptions—Confirmation—Distribution.

When the Commissioner has, in pursuance of the provisions of this act, liquidated any such corporation, he shall, as soon as the assets thereof have been converted into money, file a complete account in the court of common pleas of the county in which the proceedings were instituted; showing all deposits and assets of said corporation, all the moneys paid to him on account of the same, all exceptions filed to any claims or accounts, all payments made or contracted for by him, and the scheme of distribution to creditors, policyholders, or stockholders; which said account shall be proceeded with and passed upon as other accounts are passed upon in said court. If exceptions have been filed with the Insurance Commissioner, the same shall have the same force and effect as if filed in the court, to the said account. Upon confirmation of said account, if no exceptions be filed thereto, or upon the final disposition of exceptions thereto by the court, the Insurance Commissioner shall distribute the money as shown by said account or as decreed by the court, and, upon the complete distribution of all assets of said corporation, shall report the fact of said distribution to the court.[4]

2071. Deposit with Insurance Commissioner of Securities by Domestic Insurance and Surety Companies Desiring to Transact Business in Other States.

Any insurance or surety company incorporated under the laws of this Commonwealth, desiring to transact business in other states, the laws whereof require that such company shall first deposit securities of a designated value with the Insurance Com-

(3) Sec. 6, Act of June 1, 1911, P. L., 599.
(4) Sec. 7, Act of June 1, 1911, P. L., 599.

missioner or other proper officer of this Commonwealth, in trust, and for the benefit of all its policyholders, or any insurance company of a foreign government desiring to make the deposit required of foreign companies, in order to transact business in the United States, is hereby authorized to deposit with the Insurance Commissioner securities for such an amount as the laws of such other states designate, or as the laws of this state require for foreign companies; and if the Insurance Commissioner is satisfied that such securities are worth the required amount, it shall be his duty to receive the same, or those given in exchange therefor as hereinafter provided, for the purpose aforesaid; and from time to time, upon the written request of said insurance or surety company, to certify under his hand and official seal to the proper officer of such other state or states, or of the United States Government, wherein said insurance or surety company may desire to transact business, that said company has deposited with him securities, giving the items of kind thereof, and that he is satisfied they are worth the sum designated by the laws of such other state or states, or required by the United States Government. The Insurance Commissioner shall, upon receipt of any deposit made under this act, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same, in the name of the Commonwealth, in trust for the purposes of this act, and who shall at all times be responsible for their custody and safe-keeping. The company making the deposit shall be entitled, from time to time, to demand and receive from the State Treasurer, on the written order of the Insurance Commissioner, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, other securities of at least equal value; and also to demand, receive, sue for, and recover the interest and income from said securities, from the payee or obligee thereof, as the same becomes due and payable.[5]

2072. Return of Securities.

Upon request of any company, organized under the laws of this Commonwealth, making the deposit, the Insurance Commissioner may authorize the State Treasurer to return to such company the whole or any portion of the securities of such company held by him on deposit, if the Insurance Commissioner shall be satisfied that the securities so asked to be returned are subject to

(5) Sec. 1, Act of June 1, 1911, P. L., 602.

no liability, and not required to be longer held by any provision of law, or for the purpose of the original deposit; and he may, in like manner, return to the trustees, or other representatives authorized for that purpose, of an insurance company of a foreign government, any deposit made by such company, if it shall appear that such company has ceased to do business in this Commonwealth, and is under no obligation to policyholders or other persons in this Commonwealth or in the United States, for whose benefit such deposit was made; but no deposit, when once made, shall be wholly withdrawn or diminished so long as any liability to policyholders remains unsatisfied; except in case of dissolution by a court or judge of any company making the deposit, the State Treasurer shall upon the written order of said court or judge, assign and transfer to the receiver or receivers duly appointed by the said court or judge all securities or funds in his possession belonging to the company.[6]

2073. Suits in Equity to Enforce or Terminate Trusts Created by Deposits.

An insurance or surety company which has made such deposit, or its trustees or resident manager in the United States, or the Insurance Commissioner, may, at any time, bring in any court having jurisdiction a suit in equity, against the Commonwealth and other parties properly joined therein, to enforce, administer, or terminate the trust created by such deposit. The process in such suit shall be served on the State Treasurer, who shall appear and answer on behalf of the Commonwealth, and perform such orders and decrees as the court may make thereon.[7]

2074. Repeal.

The act of sixth April, Anno Domini one thousand eight hundred and sixty-eight, entitled "An act to enable insurance companies to transact business in other states," be and the same is hereby repealed.[8]

2075. Estimation of the Condition of Casualty Insurance Companies—Annual Statement to be Filed with Insurance Commissioner.

In estimating the condition of any casualty insurance company, the indebtedness for outstanding losses under insurance against

(6) Sec. 2, Act of June 1, 1911, P. L., 602.
(7) Sec. 3, Act of June 1, 1911, P. L., 602.
(8) Sec. 4, Act of June 1, 1911, P. L., 602.

loss or damage resulting from accident to or injuries suffered by an employe or other person, and for which the insured is liable, and under insurance against loss from liability on account of the death of or injury to an employe not caused by the negligence of the employer, shall be determined as follows: Each corporation which writes policies covering any of said kinds of insurance shall include in the annual statement required to be filed with the Insurance Commissioner a schedule of its experience thereunder, in the United States and foreign countries in the case of corporations organized in the United States, and in the United States only, in the case of corporations organized outside of the United States, giving each calendar year's experience separately, and crediting or charging each item to the year in which the policy to which it relates was written, as follows: (1) The earned premiums on all such policies written during the period of ten years immediately preceding the date as of which the statement is made, being the gross premiums on all such policies, including excess and additional premiums and premiums in course of collection, less return premiums and premiums on cancelled policies, and less the unearned premiums on policies in force as shown in such annual statements; (2) the amount of all payments, of whatsoever nature, made by reason or on account of injuries covered by such policies written during said period. This amount shall include medical and surgical attendance, payments to claimants, legal expenses, salaries and expenses of investigators, adjusters and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employes, home-office expenses, and all other payments made on account of such injuries, whether such payments are allocated to specific claims or are unallocated; (3) the number of suits being defended at the date as of which the statement is made, under policies written during said period, except suits in which liability is not dependent upon negligence of the insured, and a charge of seven hundred and fifty dollars for each suit; (4) the number of deaths for which the insured are liable without proof of negligence, covered by policies written during said period, and not paid for at the date as of which the statement is made, and a charge of the amount necessary to pay for such deaths; (5) the number of unpaid claims at the date as of which the statement is made, on account of non-fatal injuries for which the insured are liable without proof of negligence, covered by policies written during said

period, and a charge equal to the present value of the estimated future payments; (6) the loss ratio determined from the foregoing as to each year separately, using as the divisor the earned premiums shown in item (1), and as the dividend the amount of payments shown in item (2), plus the amounts charged in items (3), (4) and (5); (7) the number of suits being defended at the date as of which the statement is made, under policies written more than ten years prior to such date, except suits in which liability is not dependent upon the negligence of the insured; (8) the number of deaths for which the insured are liable without proof of negligence, covered by policies written more than ten years prior to the date as of which the statement is made, and not paid for at such date; (9) the number of unpaid claims at the date as of which the statement is made on account of non-fatal injuries for which the insured are liable without proof of negligence, covered by policies written more than ten years prior to such date.[9]

2076. Distribution of Allocated Payments.

All unallocated payments in item (2), made in a given calendar year subsequent to the first four years in which a corporation has been issuing such policies, shall be distributed as follows: Thirty-five per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, ten per centum to the policies written in the second year preceding, ten per centum to the policies written in the third year preceding, and five per centum to the policies written in the fourth year preceding; and such payments made in the first four calendar years in which a corporation has been issuing such policies shall be distributed as follows: In the first calendar year, one hundred per centum shall be charged to the policies written in that year; in the second calendar year, fifty per centum shall be charged to the policies written in that year, and fifty per centum to the policies written in the preceding year; in the third calendar year, forty per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, and twenty per centum to the policies written in the second year preceding; and in the fourth calendar year, thirty-five per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding

(9) Sec. 1, Act of June 1, 1911, P. L., 604.

year, fifteen per centum to the policies written in the second year preceding, and ten per centum to the policies written in the third year preceding; and a schedule showing such distribution shall be included in such annual statement.[10]

2077. Determination of Indebtedness for Outstanding Losses.

Each such corporation shall be charged with indebtedness for outstanding losses upon such policies, determined as follows: (10) For all suits being defended under policies written more than ten years prior to the date as of which the statement is made, except suits in which liability is not dependent upon negligence of the insured, one thousand dollars for each suit; (11) for all suits being defended under policies written more than five years and less than ten years prior to the date as of which the statement is made, except suits in which liability is not dependent upon negligence of the insured, seven hundred and fifty dollars for each suit; (12) for all deaths for which the insured are liable without proof of negligence, covered by policies written more than five years prior to the date as of which the statement is made, the amount necessary to pay for such deaths; (13) for all unpaid claims on account of non-fatal injuries for which the insured are liable without proof of negligence, under policies written more than five years prior to the date as of which the statement is made, the present value of the estimated future payments; (14) for the policies written in the five years immediately preceding the date as of which the statement is made, an amount determined as follows: multiply the earned premiums of each of such five years, as shown in item (1), by a loss ratio of fifty per centum at and after December thirty-first, one thousand nine hundred and eleven, by a loss ratio of fifty-one per centum at and after December thirty-first, one thousand nine hundred and twelve, by a loss ratio of fifty-two per centum at and after December thirty-first, one thousand nine hundred and thirteen, by a loss ratio of fifty-three per centum at and after December thirty-first, one thousand nine hundred and fourteen, by a loss ratio of fifty-four per centum at and after December thirty-first, one thousand nine hundred and fifteen, and by a loss ratio of fifty-five per centum at and after December thirty-first, one thousand nine hundred and sixteen, and from the amount so ascertained, in each of the last five years of said ten-year period, deduct all payments made

(10) Sec. 1, Act of June 1, 1911, P. L., 604.

under policies written in the corresponding year, as shown in item (2), and the remainder in the case of each year shall be deemed the indebtedness for that year: *Provided, however,* That if the remainder, in the case of any year of the first three years of the five years immediately preceding the date as of which the statement is made, shall be less than the sum of the three following items for that year at that date,—(a) the number of suits, except suits in which liability is not dependent upon negligence of the insured, being defended under policies written in that year and a charge of seven hundred and fifty dollars for each suit, (b) the amount necessary to pay for all debts for which the insured are liable without proof of negligence, covered by policies written in that year, and (c) the present value of estimated unpaid claims on account of non-fatal injuries for which the insured are liable without proof of negligence, covered by policies written in that year—then the sum of said items (a), (b) and (c) shall be the indebtedness for that year.[11]

2078. Companies Insuring for a Period of Less than Ten Years.

A corporation which has been issuing such policies for a period of less than ten years shall, nevertheless, include in its annual statement a schedule, as hereinbefore required, for the years in which it shall have issued such policies, and shall be charged with an indebtedness determined in the same manner.[12]

2079. Insurance Companies Prohibited from Giving Rebates or Other Inducements to Insurance not Specified in Policies.

No insurance company organized under the laws of, or doing business in, this Commonwealth, or any officer, agent, solicitor, or representative thereof, or any insurance broker, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirecly, as inducements to insurance, nor shall any person knowingly receive as such inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind, or any special advantage in date of policy or age of issue, not exceeding six months from date of the application, or any valuable consideration or inducement whatever, not specified in the policy contract

(11) Sec. 2, Act of June 1, 1911, P. L., 604.
(12) Sec. 3, Act of June 1, 1911, P. L., 604.

of insurance, or give, sell, or purchase, or offer to give, sell, or purchase, as inducements to insurance or in connection therewith, any stock, bonds or other securities of such insurance company or other insurance company, or any dividends or profits to accrue thereon, except as hereinafter provided.

No life insurance company organized under the laws of, or doing business in, this Commonwealth, shall make or permit any distinction or discrimination in favor of individuals, between insurants of the same class with equal expectation of life, in the amount or payment or premiums or rates charged for polciies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any of the terms and conditions of the contracts it makes; nor shall any such company or agent thereof make any contract of insurance, or agreement as to such contract, other than is plainly expressed in the policy issued thereon:: *Provided,* That nothing in this act shall be so construed as to forbid a company, transacting industrial insurance on a weekly payment plan, from returning to policyholders who have made a premium payment for a period of at least one year, directly to the company at its home or district offices, a percentage of the premiums which the company would have paid for the weekly collection of such premium: *Provided, however,* That it shall be lawful for any insurance company, organized on the joint stock plan or otherwise, under the laws of Pennsylvania, or any other state and authorized to do business in Pennsylvania, prior to the first day of March, Anno Domini one thousand nine hundred and nine, now engaged in selling its own stock to policy holders of such company, to continue the sale of the same until the amount of capital or guarantee capital which such companies are authorized by law to have shall have been disposed of.

And provided further, That it shall be lawful for any life insurance company organized on the mutual assessment plan, under the laws of Pennsylvania, prior to said first day of March, Anno Domini one thousand nine hundred and nine, and actually engaged prior to and on said date in selling, by option or otherwise, to its policy holders the stock of a proposed joint stock life insurance company, to be organized under the laws of this state for the purpose of taking over the insurance business of said mutual company when so organized, to continue the sale of the same, either by said mutual company or by its successor, the proposed joint stock company, when formed, until an amount of

capital not in excess of one million dollars shall have been disposed of.

No person shall be excused from attending or testifying, or producing any books, papers, or other documents, before any court or magistrate having jurisdiction, upon any investigation, proceeding, or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying.[13]

Under the foregoing act an insurance agent doing business in Pennsylvania may insure his own property or his own life in companies for which he is agent, and take the same commission that he would be entitled to receive if he had insured the property or life of another person.[14]

(13) Act of Mch. 31, 1911, P. L., 39, amending Sec. 1, Act of May 3, 1909, P. L., 405.

(14) Insurance, 13 Dau. Co. Rep., 30 (1909). Op. Atty. Gen.

FORMS.

2060. Appointment of Secretary of Commonwealth as Attorney for Foreign Corporations.

TO THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA:

Sir:

The.....Company, a foreign corporation, in compliance with the act of General Assembly of Pennsylvania, entitled "An act to regulate the doing of business in this Commonwealth by foreign corporations, the registration thereof and service of process thereon, and providing punishment and penalties for the violation of its provisions, and repealing previous legislation on the subject," approved the 8th day of June, 1911, does hereby certify:

First. That the title of said corporation is .....
....

Second. That it is established, organized or chartered under the laws of the State of ....., with its principal office at.....

Third. The purpose of said corporation is.....
....
....
....

Fourth. Its principal place of business in the Commonwealth of Pennsylvania, and the post-office address, within the Commonwealth, to which the Secretary of the Commonwealth shall send by mail any process against it, served on him, is at No.....street,.....in the county of..... in said Commonwealth. The company's agent in said place of business, to accept said process, is:
....

Fifth. The said ..... Company does hereby appoint the Secretary of the Commonwealth of Pennsylvania, and his successor in office, to be its true and lawful at-

torney and authorized agent, upon whom all lawful process in any proceeding against it may be served, and agrees that service of process on the Secretary of the Commonwealth shall be of the same legal force and validity as if served upon it, the said corporation, and the authority for such service of process shall continue in force as long as any liability remains outstanding against it in the Commonwealth of Pennsylvania.

IN TESTIMONY WHEREOF, The said corporation has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be affixed and attested by its Secretary, this ..... day of ....., 191—.

CORPORATE SEAL.

....., 191—.

..... Company.

By .....

..... President.

Attest:

..... Secretary.

The fee for filing this paper is $10.00.

All fees must be paid in cash, by money order, certified check or bank draft.

2081. Return of Changes of Address of Foreign Corporations.

TO THE SECRETARY OF THE COMMONWEALTH:

The .....Company, a corporation created under the laws of....., respectfully certifies under its corporate seal, that its principal place of business in the Commonwealth of Pennsylvania, and the post-office address, within the Commonwealth, to which the Secretary of the Commonwealth shall send by mail any process against it, served on him has been changed to No....., Street....., in the county of....., in said Commonwealth.

The company's agent in said place of business, to accept said process, is.....

IN TESTIMONY WHEREOF, The said corporation has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be affixed and attested by its Secretary, this.....day of..... ....., 191—.

CORPORATE SEAL.

..... Company.

By

..... President.

Attest:

..... Secretary.

The Fee for Filing this Paper is $5.00.

All fees must be paid in cash, by money order, certified check or bank draft.

2082. Articles of Association of Fire and Marine Insurance Companies.

ARTICLES OF AGREEMENT.

—of the—

.....

Know all Men by these presents:

We, the undersigned, citizens of the Commonwealth of Pennsylvania, do hereby associate to form an incorporated company for the purpose of transacting the business of ..... insurance, in accordance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation of fire and marine insurance companies, and for the regulation of home and foreign fire and marine insurance companies," approved the first day of June, A. D. 1911, and the supplements and amendments thereto; and for that purpose do make and sign these as our Articles of Agreement:

1st. The name by which the corporation shall be known is
....

2nd. The class of insurance for which the corporation is constituted, is Class.....as provided for in Section 1 of the above recited Act, viz: For making insurances
....
....
....

3rd. The plan or principle on which the business is to be conducted is the joint stock plan or principle.

4th. The place in which the corporation is to be established or located, is.....
....

5th. The amount of the capital stock of the corporation is
....
divided into.....shares of the par value of.....
dollars each.

6th. The general objects of the Company are to make insurances on the Joint Stock Principle against loss as provided in Class....., Section 1, of the above recited Act.

7th. The proposed duration of the Company is perpetual.

8th. The powers which the corporation proposes to have and exercise are: To have succession as hereinbefore provided; to adopt and have a common seal; and the same to alter at pleasure; to sue and be sued; and, in general, to exercise the powers of a corporate body, and make such contracts as may be necessary to carry out the objects of.....insurance on the plan provided for in this agreement; to purchase or lease such real estate as may be necessary for a place of business, and for the security of investments; and to adopt such by-laws as may from time to time be deemed necessary.

9th. The subscribers to these articles of agreement have chosen from their number a President, a Secretary, a Treasurer, and a Board of.....Directors, who shall continue in office until the first annual meeting of the stockholders, and until their successors are duly chosen and qualified, and whose names and residences are as follows:

Name. Residence.

.... President.

.... Secretary.

.... Treasurer.

Directors.

....

....

10th. It is understood and agreed that this instrument shall be executed in two exact counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same instrument.

IN WITNESS WHEREOF, The subscribers to these articles of agreement have hereunto subscribed their names and places of residence, this ..... day of ....., A. D. 191..

Name. Residence.

....

....

....

Commonwealth of Pennsylvania }
County of ..... } ss:

Before me, the subscriber, a person empowered to receive acknowledgment of deeds, residing in ....., in said Commonwealth, personally came the within named

....

....

who, in due form of law, acknowledged the within instrument of writing to be their act and deed, and desire that the same may be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this ..... day of ....., A. D. 19..

.....

(Seal.) .....

INSURANCE DEPARTMENT.

Harrisburg, Pa., ..., 19..

To the Attorney General of the Commonwealth of Pennsylvania:

The title of the Company named in the within articles of agreement, namely, ...
....
is hereby approved; and I do hereby certify that all of the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation of fire and marine insurance companies, and for the regulation of home and foreign fire and marine insurance companies," approved the first day of June, A. D. 1911, in relation to the incorporation of insurance companies, have been complied with by the .....
.....

.....
Insurance Commissioner.

ATTORNEY GENERAL'S OFFICE.

Harrisburg, Pa., ..., 19..

To His Excellency the Governor of the Commonwealth of Pennsylvania:

I do hereby certify that I have examined the above and foregoing articles of agreement of the .....
....., and find this instrument to be in accordance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation of fire and marine insurance companies, and for the regulation of home and foreign fire and marine insurance companies," approved the first day of June, A. D. 1911, and not inconsistent with the Constitution of this Commonwealth and of the United States, and the same is hereby approved.

.....
Attorney General.

2083. Articles of Association of Life Insurance Companies.

ARTICLES OF AGREEMENT.

—of the—

.....

Know all Men by these presents:

We, the undersigned, citizens of the Commonwealth of Pennsylvania, do hereby associate to form an incorporated company for the purpose of transacting the business of life insurance, in accordance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation of life insurance companies, and for the regulation of home and foreign life insurance companies, and providing penalties for any violations thereof," approved the first day of June, A. D. 1911, and the supplements and amendments thereto; and for that purpose do make and sign these as our Articles of Agreement:

1st. The name by which the corporation shall be known is

....

2nd. The class of insurance for which the corporation is constituted, is Class.....as provided for in Section 1 of the above recited Act, viz: For making insurances

....

....

....

3rd. The plan or principle on which the business is to be conducted is the joint stock plan or principle.

4th. The place in which the corporation is to be established or located, is.....

....

5th. The amount of the capital stock of the corporation is

....

divided into.....shares of the par value of..... dollars each.

6th. The general objects of the Company are to make insurances on the Joint Stock Principle against loss as provided in Class....., Section 1, of the above recited Act.

7th. The proposed duration of the Company is perpetual.

8th. The powers which the corporation proposes to have and exercise are: To have succession as hereinbefore provided; to adopt and have a common seal; and the same to alter at pleasure; to sue and be sued; and, in general, to exercise the powers of a corporate body, and make such contracts as may be necessary to carry out the objects of life insurance on the plan provided for in this agreement; to purchase or lease such real estate as may be necessary for a place of business, and for the security of investments; and to adopt such by-laws as may from time to time be deemed necessary.

9th. The subscribers to these articles of agreement have chosen from their number a President, a Secretary, a Treasurer, and a Board of.....Directors, who shall continue in office until the first annual meeting of the stockholders, and until their successors are duly chosen and qualified, and whose names and residences are as follows:

Name.	Residence.	
.....	.....	President.
.....	.....	Secretary.
.....	.....	Treasurer.

Directors.

....

....

10th. It is understood and agreed that this instrument shall be executed in two exact counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same instrument.

IN WITNESS WHEREOF, The subscribers to these articles of agreement have hereunto subscribed their names and places of residence, this ..... day of ....., A. D. 191..

Name.	Residence.
.....	.....
.....	.....

Commonwealth of Pennsylvania }
County of ..... } ss:

Before me, the subscriber, a person empowered to receive acknowledgment of deeds, residing in ....., in said Commonwealth, personally came the within named

.....

.....

.....

.....

who, in due form of law, acknowledged the within instrument of writing to be their act and deed, and desire that the same may be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this ..... day of ....., A. D. 19..

.....

(Seal.) .....

INSURANCE DEPARTMENT.

Harrisburg, Pa., ..., 19..

To the Attorney General of the Commonwealth of Pennsylvania:

The title of the Company named in the within articles of agreement, namely, ...
.....
is hereby approved; and I do hereby certify that all of the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation of life insurance companies, and for the regulation of home and foreign life insurance companies, and providing penalties for the violations thereof," approved the first day of June,

A. D. 1911, in relation to the incorporation of insurance companies, have been complied with by the .....
.....

.....

Insurance Commissioner.

ATTORNEY GENERAL'S OFFICE.

Harrisburg, Pa., ..., 19..

To His Excellency, the Governor of the Commonwealth of Pennsylvania:

I do hereby certify that I have examined the above and foregoing articles of agreement of the .....
....., and find this instrument to be in accordance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation of life insurance companies, and for the regulation of home and foreign life insurance companies, and providing penalties for any violations thereof," approved the first day of June, A. D. 1911, and not inconsistent with the Constitution of this Commonwealth and of the United States, and the same is hereby approved.

.....

Attorney General.

2084. Articles of Association of Casualty Insurance Companies.

ARTICLES OF AGREEMENT.

—of the—

.....

Know all Men by these presents:

We, the undersigned, citizens of the Commonwealth of Pennsylvania, do hereby associate to form an incorporated company for the purpose of transacting the business of casualty insurance, in accordance with the provisions of an Act of the General As-

sembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation of casualty insurance companies, and for the regulation of home and foreign casualty insurance companies, and providing penalties for the violation of any of the provisions of this Act," approved the first day of June, A. D. 1911, and the supplements and amendments thereto; and for that purpose do make and sign these as our Articles of Agreement:

1st. The name by which the corporation shall be known is .....

2nd. The class of insurance for which the corporation is constituted, is Class.....as provided for in Section 1 of the above recited Act, viz: For making insurances

.....
.....
.....
.....

3rd. The plan or principle on which the business is to be conducted is the joint stock plan or principle.

4th. The place in which the corporation is to be established or located, is .....

5th. The amount of the capital stock of the corporation is .....
divided into.....shares of the par value of..... dollars each.

6th. The general objects of the Company are to make insurances on the Joint Stock Principle against loss as provided in Class....., Section 1, of the above recited Act.

7th. The proposed duration of the Company is perpetual.

8th. The powers which the corporation proposes to have and exercise are: To have succession as hereinbefore provided; to adopt and have a common seal; and the same to alter at pleasure; to sue and be sued; and, in general, to exercise the powers of a corporate body, and make such contracts as may be necessary to carry out the objects of casualty insurance on the plan provided for in this agreement; to purchase or lease such real estate as may be necessary for a place of business, and for the security of investments; and to adopt such by-laws as may from time to time be deemed necessary.

9th. The subscribers to these articles of agreement have chosen from their number a President, a Secretary, a Treasurer, and a Board of.....Directors, who shall continue in office until the first annual meeting of the stockholders, and until their successors are duly chosen and qualified, and whose names and residences are as follows:

Name.	Residence.	
.....	.....	President.
.....	.....	Secretary.
.....	.....	Treasurer.

Directors.

....

....

....

10th. It is understood and agreed that this instrument shall be executed in two exact counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same instrument.

IN WITNESS WHEREOF, The subscribers to these articles of agreement have hereunto subscribed their names and places of residence, this ..... day of ....., A. D. 191..

Name.	Residence.
.....	.....
.....	.....
.....	.....

Commonwealth of Pennsylvania }
County of ..... } ss:

Before me, the subscriber, a person empowered to receive

acknowledgment of deeds, residing in ....., in said Commonwealth, personally came the within named

.....

.....

.....

.....

who, in due form of law, acknowledged the within instrument of writing to be their act and deed, and desire that the same may be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this ..... day of ....., A. D. 19..

.....

(Seal.) .....

INSURANCE DEPARTMENT.

Harrisburg, Pa., ..., 19..

To the Attorney General of the Commonwealth of Pennsylvania:

The title of the Company named in the within articles of agreement, namely, ...

.....

is hereby approved; and I do hereby certify that all of the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation of casualty insurance companies, and for the regulation of home and foreign casualty insurance companies, and providing penalties for the violation of any of the provisions of this act," approved the first day of June, A. D. 1911, in relation to the incorporation of insurance companies, have been complied with by the .....

.....

.....

Insurance Commissioner.

ATTORNEY GENERAL'S OFFICE.

Harrisburg, Pa., ..., 19..

To His Excellency the Governor of the Commonwealth of Pennsylvania:

I do hereby certify that I have examined the above and foregoing articles of agreement of the ...., and find this instrument to be in accordance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to provide for the incorporation of casualty insurance companies, and for the regulation of home and foreign casualty insurance companies, providing penalties for the violation of any of the provisions of this Act," approved the first day of June, A. D. 1911, and not inconsistent with the Constitution of this Commonwealth and of the United States, and the same is hereby approved.

.....

Attorney General.

APPENDIX.

PENNSYLVANIA STATE RAILROAD COMMISSION.

1. Appointment and Term of Commissioners.

A Commission is hereby created, to be known as the Pennsylvania State Railroad Commission, which shall be composed of three competent persons, appointed by the Governor, by and with the advice and consent of the Senate, at least one of whom shall be learned in the law. The Commissioners first appointed under this act shall continue in office for the term of three, four, and five years, respectively, as designated by the Governor in making said appointments, from the first Monday of January, Anno Domini one thousand nine hundred and eight, and until their respective successors shall have been appointed and shall have qualified; but their successors shall be appointed for the term of five years; and when a vacancy shall occur in the office of any Commissioner, a Commissioner shall, in like manner, be appointed for the residue of the term. If the Senate shall not be in session when this act is approved or a vacancy occurs, the Governor shall appoint the original Commission, or, in case of a vacancy, appoint a Commissioner to fill such vacancy subject to the approval of the Senate when convened. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the rights of the Commission. The Governor shall designate one of the members of said Commission as chairman thereof, who, when present, shall preside at all meetings, and in his absence the member whose term will first expire shall preside.[15]

2. Secretary, Attorney and Marshal of Commission.

The Commission shall have a secretary, an attorney, and a marshal, who shall be appointed by it, subject to the approval of the Governor, and serve during its pleasure. The secretary shall keep a full and faithful record of the proceedings of the Commission, and be the custodian of its records, and file and preserve at its general office all books, maps, documents, and papers entrusted to its care, and be responsible to the Commission for the same.

(15) Sec. 1, Act of May 31, 1907, P. L., 337.

Under the direction of the Commission, he shall be its chief executive officer; shall have general charge of its general office, superintend its clerical business, conduct its correspondence, be the medium of its decisions, recommendations, and requests, prepare for service such papers and notices as may be required of him by the Commission, and perform such other duties as the Commission may prescribe; and he shall have power to administer oaths in all cases pertaining to the duties of his office. He shall have the power to designate, from time to time, one of the clerks appointed by the Commission, to act as assistant secretary during his absence from the county of Dauphin, and the clerk so appointed, for the time designated, shall, within the county of Dauphin only, possess the powers conferred by this section upon the secretary of the Commission.

The attorney shall attend the hearings of the Commission, conduct the examination of witnesses when requested to do so by the Commission, assist the Attorney General in all actions brought by him incidental to the recommendations and rulings of the Commission, and perform such other duties as may be required of him by the Commission.

The marshal shall attend the hearings of the Commission, serve such papers as the Commission may direct, and perform such other duties as may be required by the Commission.[16]

3. Other Officers of Commission.

The Commission may also, as occasion may require, appoint to serve during its pleasure, the following officers, or any of them: An accountant, who shall be thoroughly skilled in railroad accounting, and who shall, under the direction of the Commission, make examinations of the books and accounts of common carriers, supervise the quarterly and annual reports made by them to the Commission, and perform such other duties as the Commission may prescribe; an inspector, who shall be a civil engineer, skilled in railroad affairs; also an inspector, who shall be an expert in electrical affairs; each of whom shall make such inspection of railroads and other matters relating thereto as directed by the Commission, and report to it. The Commission may also employ such additional clerical force as may be necessary for the transaction of its business, and such engineers, accountants, and other experts, whose services they may deem to be

(16) Sec. 2, Act of May 31, 1907, P. L., 337.

of temporary importance in conducting an investigation authorized by law, as said Commission may deem necessary.[17]

4. Oath of Commissioners and Employees—Commissioners and Employees not to Have Relations With Common Carriers Nor Own Stocks or Bonds Thereof.

Each Commissioner and every person appointed to office by the Commission shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. No person shall be appointed a member of the Commission, or hold any office, place or position under it, who occupies any official relation to any common carrier, doing business in the state of Pennsylvania or elsewhere, or owns stocks or bonds therein, or who is in any manner pecuniarily interested therein, directly or indirectly; nor shall any member, officer, or employe of the Commission, either personally or through a partner or agent, render any professional services for or against any common carrier subject to the povisions of this act, except as herein provided.[18]

5. Office of Commission—Quorum—Rules of Procedure.

The principal office of the Commission shall be in the city of Harrisburg, in rooms designated by the Board of Public Grounds and Buildings; and the Commission, or a quorum thereof, shall meet in Harrisburg as often as shall be requisite for the performance of its duties.

The Commission shall have an official seal, to be prepared by the Secretary of the Commonwealth; and its offices, upon the requisition of the secretary of the said Commission, shall be supplied with the necessary stationery, office-furniture, and supplies by the Board of Public Grounds and Buildings; and provision for the necessary funds for the same shall be made as an item in the Board of Public Grounds and Buildings fund in the general appropriation bill; and said Commission shall have prepared for it by the Superintendent of Public Printing and Binding, the necessary books, maps, printing, and stationery for the discharge of its duties, which shall be furnished upon the requisition of its secretary.

The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the

(17) Sec. 3, Act of May 31, 1907, P. L., 337.
(18) Sec. 4, Act of May 31, 1907, P. L., 337.

ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business; but no Commissioner shall participate in any hearing or proceedings in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as it may determine for the orderly regulation of proceedings before it, including forms of notices and the service thereof. Any party may appear before said Commission, and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. All examinations or investigations made by the Commission may be held and taken by and before any of the Commissioners, by order of the Commission, and the proceedings, recommendations, and decisions of such single Commissioner shall be deemed to be the proceedings, recommendations, and decisions of the Commission when approved and confirmed by it.[19]

6. "Common Carriers" Defined.

The term "common carrier," as used in this act, shall apply to all corporations, or any person or persons, within the state, engaged in the transportation of freight or passengers by means of railroads or by water, or partly by railroad and partly by water, including electric railway companies, street railway companies, elevated railway companies, underground, elevated, or subway passenger railway companies, bridges and ferries, when used in connection with the transportation of freight or passengers upon any such railroad or railway; pipe-line companies engaged in the transportation of oil, either by means of pipe-lines, or by water, or partly by means of pipe-lines and partly by means of railroads or railways, or partly by means of pipe-lines and partly by means of water; sleeping- and drawing-room car companies engaged in transporting passengers upon any such railroad; express companies engaged in transporting property upon any such railroad, electric railway, street railway, or by water; and telegraph or telephone companies.[20]

7. Powers of Commission.

The Commission shall have power to administer oaths in all matters in relation to its duties, so far as necessary to enable it to

(19) Sec. 5, Act of May 31, 1907, P. L., 337.
(20) Sec. 6, Act of May 31, 1907, P. L., 337.

discharge such duties. It shall have full power and authority to inquire into the management of the business of all common carriers, including freight and passenger rates and tariffs, the equitable distribution of cars, the granting of sidings and regulation of crossings, the location of freight- and passenger-stations, the adequacy of facilities for the carriage and transportation of freight and passengers, the use and compensation for cars owned or controlled by persons other than the carrier, and, generally, all matters incident to the performance of their public duties, and their compliance with the provisions of their charters and the laws of the land.[21]

8. Complaints to Commission of Acts of Common Carriers.

Any person, firm, corporation, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complaining of any thing done or omitted to be done by any common carrier subject to the provisions of this act, in violation of law or of any decision, regulation, or recommendation of the Commssion, may apply to the Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same, in reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant, only for the specific violation of law complained of. If such common carrier shall not satisfy the complaint, within the time specified, and there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of, in such manner and by such means as it shall deem proper. Said Commission may institute any inquiry of its own motion, in the same manner and to the same effect as though complaint had been made. No complaint shall, at any time, be dismissed because of the absence of direct damage to the complainant. The Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint as aforesaid, it shall be of the opinion that any of the rates or charges whatsoever, demanded, charged or collected by any common carrier or carriers subject to the provisions

(21) Sec. 7, Act of May 31, 1907, P. L., 337.

of this act are unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any provision of law, or that any regulation or practice in respect to transportation is unjust, unfair, or unreasonable, and in violation of law, to decide and recommend what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what regulation or practice in respect to transportation is just, fair, and reasonable, to be thereafter followed.[22]

9. Where Owners of Property Transported Render Service in Connection With Transportation.

If the owner of property transported by common carriers subject to the provisions of this act, directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall not be more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the instrumentality so furnished.[23]

10. Powers of Commissioners, Continued—Issue of Subpoenas—Punishment for Failure to Obey Subpoenas—Testimony Before Commission.

The Commissioners, or any of them, in the performance of their official duties, or any person in the office of said Commission and specially delegated by the Commission for that purpose, may enter, and remain during business hours in, the cars, offices, and depots, and upon the railroads, of any common carrier, within the state or doing business therein, and may examine the books and affairs of any such common carrier; and in all proceedings before the Commission, under a complaint duly filed, the Commission shall have power to require, by subpoena, the attendance and the testimony of the witnesses, and the production of all books, papers, tariffs, contracts, agreements and documents relating to any matter embraced within said complaint.

And in case of disobedience to a subpoena, the Commission, or any part to a proceeding before the Commission, may invoke the aid of a court of common pleas, within whose jurisdiction the

(22) Sec. 8, Act of May 31, 1907, P. L., 337.
(23) Sec. 9, Act of May 31, 1907, P. L., 337.

complaint is carried on, in requiring the attendance and testimony of witnesses, and the production of books, papers, and documents, under the provisions of this section.

Any of the common pleas courts of this state, within whose jurisdiction such hearing or complaint is being carried on, may, in case of contumacy or refusal to obey a subpoena, issue to any common carrier subject to the provisions of this act, or other persons, an order requiring such common carrier or other person to appear before said Commission,—and produce books and papers, if so ordered,—and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as contempt thereof.

The claim that any such testimony or evidence, documentary or otherwise, may tend to criminate the witness giving such evidence, or subject him to a penalty of forfeiture, shall not excuse such witness from testifying; but no person shall be prosecuted, or subjected to any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena or the subpoena of the said court: *Provided,* That no person testifying shall be exempt from prosecution and punishment for perjury in so testifying. If such person be an officer or director of a common carrier subject to the provisions of this act, being a party to the proceedings before the Commission, or if any person, being an officer or director of such common carrier, shall absent himself from the jurisdiction of the state, or conceal himself, for the purpose of avoiding service of such subpoena, he shall be adjudged guilty of contempt; and the said court of common pleas may impose a fine, not less than one hundred dollars for each day during the continuance of such refusal or neglect; and if the said court shall find that the neglect or refusal of such witness is occasioned by the advice or consent of such common carrier, in default of payment of said fine the same shall be collected from said common carrier, by an action in the said court of common pleas in any county in the state, as other like fines and penalties are now recovered by law. Imprisonment for contempt shall be by commitment to the county jail of the county in which such hearing is held.[24]

(24) Sec. 10, Act of May 31, 1907, P. L., 337.

11. Hearings for or Against Proposed Changes of Law.

The Commission may also take testimony upon, and have a hearing for and against, any proposed change of law relating to common carriers, or of the general railroad law, if requested to do so by the Secretary of Internal Affairs, the Legislature, or by the Committee on Railroads of the Senate or House of Representatives, or by the Governor; and may take such testimony, and have such a hearing, when requested by any of said common carriers, corporation, or person interested; and shall recommend and draft such bills as will, in its judgment, protect the interests of the public in connection with common carriers.[25]

12. Reports to Commission by Common Carriers.

The Commission may require every common carrier, subject to its jurisdiction, to file with it a copy of its annual reports, as filed with the Interstate Commerce Commission of the United States; and as to all common carriers subject to this act, and not subject to the Interstate Commerce Commission, may require that such common carriers file annual reports in the form prescribed by the Commission.[26]

13. Investigation of Causes of Accidents.

The Commission shall investigate the cause of any accident on the lines or property of any common carrier, resulting in loss of life or injury to persons, within thirty days of the happening of said accident, when, in their judgment, said accident shall require investigation; and shall advise said common carrier of the result of said investigation, within sixty days from the happening of said accident, and shall include the result of said investigation in their reports. Before making any such examination or investigation, under this section, reasonable notice shall be given to the corporation, person, or persons, conducting and managing such common carrier, of the time and place of commencing the same. The general superintendent or manager of every common carrier shall inform the Commission of any such accident immediately after its occurrence.

If the examination of the books and affairs of a common carrier, or if witnesses in its employ, shall be necessary in the course of any hearing on complaint, as hereinbefore provided, or exam-

(25) Sec. 11, Act of May 31, 1907, P. L., 337.
(26) Sec. 12, Act of May 31, 1907, P. L., 337.

ination or investigation into its affairs, the Commission, or a member thereof designated by it, shall sit for such purpose, in the city or town of this state where the principal business office of such common carrier is situated, if requested so to do by the common carrier; but the Commission may require copies of books and papers, or abstracts thereof, to be sent to it to any part of the state. The Commission may issue commissions to take the testimony of absent, infirm, or waygoing witnesses, according to the rules of the courts of equity.[27]

14. Recommendations as to Railroad Crossings and Forms of Schedules and Tariffs.

The Commission shall have power to recommend the manner, under existing laws, in which one railroad, street railway, electric railway, or other common carrier, may cross another railroad, street railway, or electric railway, at grade, or above or below grade, and what safety appliances and regulations should be adopted at such crossings, or at existing grade-crossings of railroads, streets railways, electric railways, or other common carrisiers, with other railroads, street railways, and electric railways, for the protection of the public and the prevention of accidents.

The Commission shall also have power to recommend the form in which schedules or tariffs of rates, fares, charges, and distribution of cars shall be posted and published, and make such change or changes therein, from time to time, as shall be found expedient.[28]

15. Certification of Violations of Law to the Attorney General.

If it shall appear to the Commission that any common carrier, subject to the provisions of this act, has violated any provision of law, or neglected in any respect to comply with the terms of its charter, or unjustly discriminates in its charges for services, or usurps any authority not granted by law, it shall give notice, in writing, thereof to the said common carrier; and, if the violation, neglect, or refusal is continued after such notice, the Commission shall forthwith certify the matter to the Attorney General of the Commonwealth, for such action according to law as the public interests may require.[29]

(27) Sec. 13, Act of May 31, 1907, P. L., 337.
(28) Sec. 14, Act of May 31, 1907, P. L., 337.
(29) Sec. 15, Act of May 31, 1907, P. L., 337.

16. Notice of Recommendations, Decisions, Etc., to be Furnished to Officers of Common Carriers Affected Thereby—Modifications of Decisions and Rulings.

Every recommendation, decision, or ruling of the Commission shall be forthwith forwarded, by mail, to the president, secretary, or other chief officer, of the common carrier affected thereby, at his usual place of business, and a copy thereof and the registered mail-receipt shall be *prima facie* evidence of the receipt of said recommendation, decision, or ruling by the person to whom addressed in due course of mail.

The Commission is authorized to modify its recommendations, decisions, or rulings, upon such notice and in such a manner as it shall deem proper. It shall be the duty of said common carrier, within thirty days from the receipt of notice of the making of any recommendation, decision, or ruling, to notify the Commission of its intention to comply or to refuse to comply therewith.[30]

17. Orders Relative to Rates, Changes Upon Property, or Additional Stations or Service—Investigations as to Increases of Stock or Indebtedness of Common Carriers.

If, after an examination of the same, it shall appear to the Commission that any of the rates or charges established or demanded by any common carrier are excessive and unreasonable; or that repairs, additions, alterations, or changes in or upon any property of a common carrier, subject to the provisions of this act, and used by it as such, are necessary; or that any additional stations are necessary; or additional train-service to any station, or that any addition to the rolling-stock, or any addition to or change of a station or station-houses, are necessary; or that additional terminal facilities should be afforded; or that any change of the rates of fare for transporting freight or passengers, or in the mode of operating the road, or conducting its business, are reasonable and expedient, in order to promote the security, convenience, and accommodation of the public,—the Commission shall give notice thereof, and information in writing, to the common carrier, of the improvement and changes which said Commission deem proper, and shall give such common carrier an opportunity for a full hearing in relation thereto; and if the common carrier refuses or neglects to make such repairs, improvements,

(30) Sec. 16, Act of May 31, 1907, P. L., 337.

or changes within a reasonable time after such information and hearing, or fails to satisfy the Commission that no action is required to be taken by it, the Commission shall certify to the Secretary of Internal Affairs and the Attorney General of the Commonwealth the facts relating thereto, for their action according to law, as the public interests may require, and report the same in detail in its next succeeding report to the Governor.

The Commission may, whenever in its opinion the public interests require, in connection with any proposed increase in the capital stock, bonds, or other fixed indebtedness of any common carrier subject to the provisions of this act, employ competent experts to investigate the character, cost, and valuation of the property of such common carrier, and the necessity for the proposed increase of capital or indebtedness, and shall report to the Secretary of Internal Affairs of the Commonwealth the result of such investigation, for his consideration and action.[31]

18. Rights and Liabilities of Common Carriers not Affected by Action of Commission.

No examination, request, or advice of the Commission, nor any investigation or report made by it, shall impair in any manner or degree the legal rights, duties, or obligations of any common carrier, or its legal liabilities for the consequences of its act, or of the neglect or mismanagement of any of its agents or employes.[32]

19. Common Carriers to Furnish Commission Certain Information.

Every common carrier subject to the provisions of this act shall, on request, furnish the Commission any necessary information required by said Commission concerning the rates of freight, for transporting freight and passengers upon its road and other roads with which its business is connected, and the condition, management, and operation of its road, and shall, on request, furnish to the Commission copies of all contracts and agreements, leases, or other engagements entered into by it with any person or corporation. The Commissioners shall not give publicity to such information, contracts, agreements, leases, or other engagements, if, in their judgment, the public interest do not require it, or the welfare and prosperity of the common carriers of the state might be thereby affected. The enumeration of powers, as

(31) Sec. 17, Act of May 31, 1907, P. L., 337.
(32) Sec. 18, Act of May 31, 1907, P. L., 337.

herein set forth, shall not exclude any power which the Commission would otherwise have under the provisions of this act.[33]

20. Issue of Subpoenas—Fees for Copies of Records.

All subpoenas shall be issued by the secretary, when directed by the Commission or by any two members thereof, and may be served by any person, of full age, authorized by the Commission to serve the same. The fees of witnesses before the Commission shall be two dollars for each day's attendance, and five cents for every mile of travel, by the nearest generally-traveled route, in going to and returning from the place where the attendance of the witness is required. The fees for service of subpoenas shall be the same as those allowed sheriffs for similar services, and such fees, and the fees and mileage of witnesses, shall be audited by the Auditor General, and paid by the State Treasurer on a certificate of the secretary of the Commission, out of moneys appropriated for such purposes.

The Commission shall charge and collect the following fees: For copies of papers and records, not required to be certified or otherwise authenticated by the Commission, ten cents for each folio of one hundred words; for certified copies of official documents filed in its office, fifteen cents for each folio, and one dollar for every certificate, under seal, affixed thereto; for each certified copy of the quarterly report made by a railroad corporation to the Commission, fifty cents; for each certified copy of evidence and for proceedings before the Board, fifteen cents for each folio. No fees shall be charged or collected for copies of papers, records, or official documents furnished to public officers for use in their official capacity, or for the annual reports of the Commission in the ordinary course of distribution. All fees charged and collected by the Commission shall be paid, as received, to the State Treasurer, for the use of the Commonwealth, accompanied by a detailed statement thereof, a copy of which shall be filed with the Auditor General.[34]

21. Annual Report.

The Commission shall make an Annual Report, on or before the second Monday of January in each year, to the Governor, and

(33) Sec. 19, Act of May 31, 1907, P. L., 337.

(34) Sec. 20, Act of May 31, 1907, P. L., 337.

a duplicate thereof shall be filed with the Secretary of Internal Affairs, which shall contain:—

First. A record of their meetings, and an abstract of their proceedings during the preceding year.

Second. The result of any examination or investigation made by them.

Third. Such statements, facts and explanations as will disclose the actual workings and operations of common carriers in their relations to the business and prosperity of the state; and such suggestions as to the general policy of the state, or the amendment of its laws, or the condition, affairs, or conduct of any common carrier, as may seem to them appropriate.

Fourth. Drafts of all bills suggested or recommended by them, and the reasons therefor.

Fifth. Such tables and abstracts of all the reports of all the common carriers as they may deem expedient.

Sixth. A statement in detail of the traveling expenses and disbursements of the Commissioners, their clerks, marshal, and experts.

Two thousand five hundred copies of the Report, with the reports of the common carriers of the state, shall be printed as a public document of the state, bound in cloth, for the use of the Commissioners, and to be distributed by them in their discretion, to the officers of the common carriers and other persons interested therein.

Copies of all official documents, filed or deposited according to law in the office of the Commission, shall be evidence in like manner as the original.[35]

22. Certification of Decisions to Secretary of Internal Affairs and Attorney General.

The Commission shall certify each of its decisions, rulings, and recommendations to the Secretary of Internal Affairs of the commonwealth and the Attorney General, for their consideration and action according to law, as the public interests may require. Copies of said decisions, rulings, and recommendations shall be furnished to the complainant and the common carrier or carriers affected thereby.

Nothing in the act shall be construed to impair the power and authority of the Secretary of Internal Affairs, in the exercise of

(35) Sec. 21, Act of May 31, 1907, P. L., 337.

the general supervision over railroads, canals, and other transportation companies, vested in him by the Constitution and laws of this Commonwealth.[36]

23. Salaries of Commissioners and Officers.

The annual salary of each Commissioner shall be eight thousand dollars; of the secretary, four thousand dollars; of the attorney, four thousand dollars; of the marshal, twenty-five hundred dollars; and the compensation of the accountant and of the inspector, and of such other employes as the Commission may from time to time employ, shall be such sums as the Commission may fix. In the discharge of their official duties, the Commissioners shall have reimbursed to them the necessary and actual traveling expenses and disbursements of themselves, their officers, clerks and experts. All salaries and disbursements, when properly certified by the secretary of the Commission, shall be audited and allowed by the Auditor General, who shall draw his warrant therefor upon the State Treasurer, to be paid out of moneys appropriated for such purposes.[37]

24. Limitation of Annual Expenses.

The total annual expense of the Commission in carrying into effect the provisions of this act shall not exceed one hundred thousand dollars; and the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, is hereby specifically appropriated for the payment of said expenses for the fiscal years ending May thirty-first, Anno Domini one thousand nine hundred and nine.[38]

25. Act to Go Into Effect When—Repeal of Inconsistent Laws.

This act shall go into effect on the first Monday of January, Anno Domini one thousand nine hundred and eight; and all laws or parts of laws inconsistent herewith are hereby repealed.[39]

(36) Sec. 22, Act of May 31, 1907, P. L., 337.
(37) Sec. 23, Act of May 31, 1907, P. L., 337.
(38) Sec. 24, Act of May 31, 1907, P. L., 337.
(39) Sec. 25, Act of May 31, 1907, P. L., 337.

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